



भारत का राजपत्र

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No. 42]

NEW DELHI, SATURDAY, OCTOBER 21, 1995/ASVINA 29, 1917

इस भाग में भिन्न पृष्ठ संख्या वी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

विधि, न्याय और कम्पनी कार्य मंत्रालय

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(विधि कार्य विभाग)

(Department of Legal Affairs)

न्यायिक अनुभाग

Judicial Section

सूचना

NOTICE

नई दिल्ली, 4 अक्टूबर, 1995

New Delhi, the 4th October, 1995

का. प्रा. 2795.—नोटरीज नियम, 1956 के नियम 6
के अनुसरण में सभी प्राधिकारी द्वारा यह सूचना दी जाती
है कि श्री श्रीकान्त एन. टर्डल, एडवोकेट के उक्त प्राधिकारी
को उक्त नियम के नियम 4 के अधीन एक आवेदन इस
बात के लिए दिया है कि उसे सुप्रीम कोर्ट, नई दिल्ली में
व्यवसाय करने के लिए नोटरी के रूप नियुक्ति पर किसी
भी प्रकार का आपेक्षा इस सूचना के प्रकाशन के बौद्धिक दिन
के भीतर लिखित रूप से मेरे पास भेजा जाए।

S.O. 2795.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority under Rule 4 of the said Rules, by Shri Shreepant N. Terdal, Advocate for appointment as a Notary to practise in Supreme Court, New Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(174)95-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 4 अक्टूबर, 1995

का. आ. 2796.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री जगवीर सिंह तोमर, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे अलीगढ़ (उत्तर प्रदेश) में व्यवसाय करने के लिए नोटरी के रूप नियुक्ति पर किसी भी प्रकार का आपेक्षा इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (175)/95-न्यायिक]

पी. सी. कण्णन्, सक्षम प्राधिकारी

NOTICE

New Delhi, the 4th October, 1995

S.O. 2796.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Jagvir Singh Tomar, Advocate for appointment as a Notary to practise in Aligarh (U.P.)

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(175)/95-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 4 अक्टूबर, 1995

का. आ. 2797.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री श्रीराम नाना पाटील, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे मंगलवार पैठ, पुणे (महाराष्ट्र) में व्यवसाय करने के लिए नोटरी के रूप नियुक्ति पर किसी भी प्रकार का अपेक्षा इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (176)/95-न्यायिक]

पी. सी. कण्णन्, सक्षम प्राधिकारी

NOTICE

New Delhi, the 4th October, 1995

S.O. 2797.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Shreeram Nana Patil, Advocate for appointment as a Notary to practise in Mangalwar Peth, in Pune (Maharashtra).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(176)/95-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 4 अक्टूबर, 1995

का. आ. 2798.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री राजेन्द्र शान्तिलाल व्यास, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे वडोदरा जिला (गुजरात राज्य में) व्यवसाय करने के लिए नोटरी के रूप नियुक्ति पर किसी भी प्रकार का आपेक्षा इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (177)/95-न्यायिक]

पी. सी. कण्णन्, सक्षम प्राधिकारी

NOTICE

New Delhi, the 4th October, 1995

S.O. 2798.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Rajendra Shantilal Vyas, Advocate for appointment as a Notary to practise in Vadodara Distt. (Gujarat).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(177)/95-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 5 अक्टूबर, 1995

का. आ. 2799.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री अशोक यशवन्तराव काळे, एडवोकेट उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे नामिक जिला (महाराष्ट्र) राज्य में व्यवसाय करने के लिए नोटरी के रूप नियुक्ति पर किसी भी प्रकार का अपेक्षा इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5 (182)/95-न्यायिक]

पी. सी. कण्णन्, सक्षम प्राधिकारी

NOTICE

New Delhi, the 5th October, 1995

S.O. 2799.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Ashok Yashwantrao Kale, Advocate for appointment as a Notary to practise in Nasik Distt. (Maharashtra).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(182)/95-Judl.]

P. C. KANNAN, Competent Authority

वित्त मंत्रालय

MINISTRY OF FINANCE

(राजस्व विभाग)

(Department of Revenue)

आयकर महानिदेशक (छूट) का कार्यालय

कलकत्ता, 28 जुलाई, 1995

Office of the Director General of Income Tax (Exemptions)

Calcutta, the 28th July, 1995

विषय : कंप्यूटर सोसायटी ऑफ इंडिया, ब्रम्हपुर, केंद्र मामले में अधिसूचना में संबंधित संशोधनीय विषय जारी।

का.प्रा. 2800.—आयकर अधिनियम, 1961, की धारा 35 की उपधारा (1) के खण्ड (ii) के अन्तर्गत जारी किये गये अधिसूचना में कंप्यूटर सोसायटी ऑफ इंडिया के बाबत अधिसूचना संख्या 1195 दिनांक 24-8-94 तथा अधिसूचना संख्या 1330 दिनांक 13-2-95 अमण्ड में उल्लेखित अधिसूचना के प्रथम पृष्ठ पर परिवर्तित शब्द "संस्थान" को शब्द "संघ" में प्रतिस्थापित कर दिया जाये।

[एफ. सं. डी. जी. /एम.-165/कन/35(1)
(ii)/93-आईटी (ई)/1009/1445]

आर. सिंह, उप निदेशक

Sub : Issue of corrigendum—Regarding Notification in the case of Computer Society of India, Bombay.

S.O. 2800.—In the notification issued u/s. 35(1)(ii) of the Income-tax Act, 1961 in the case of Computer Society of India i.e. Notification No. 1195 dated 24-8-94 and Notification No. 1330 dated 13-2-95 respectively—the word 'Association' shall be substituted for the word 'Institution' appearing on the first page of the above mentioned Notifications.

[No. DG/M-165/CAL/35(1)(ii)/93-IT(E)/1009/1445]

R. SINGH, Dy. Director

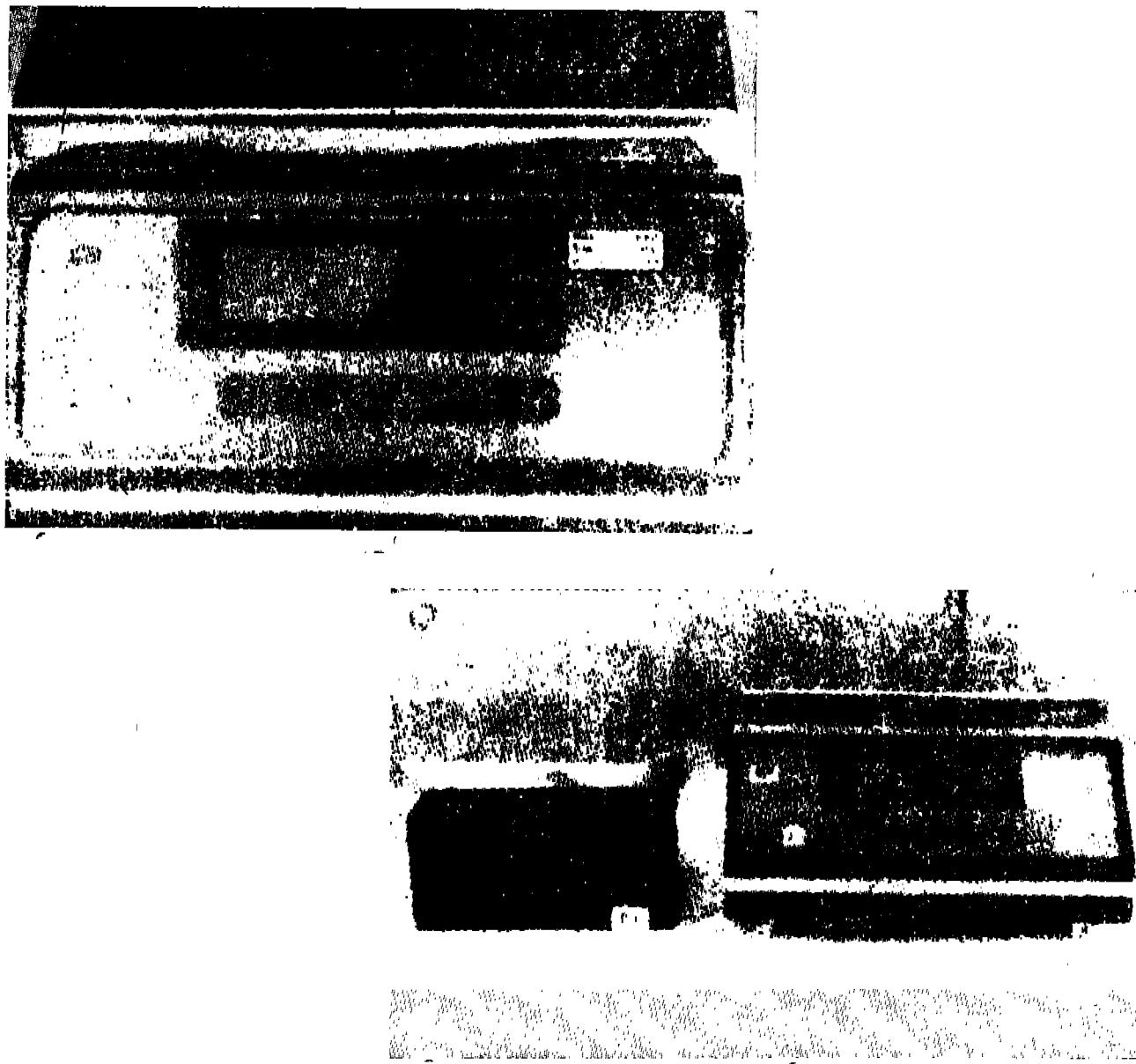
नागरिक पूर्ति, उपसोक्ता मामले और
मार्वजनिक वितरण मंत्रालय

नई दिल्ली, 6 अक्टूबर, 1995

का.प्रा. 2801.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात्, समावान हो गया है कि उक्त रिपोर्ट में बणित मॉडल बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन) नियम, 1987 के उपबन्धों के अनुरूप हैं और इस बात की संभावना है कि उक्त माडल लगातार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभाषण परिस्थितियों में उपयुक्त सेवा देता रहेगा;

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 को उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, टाइप पी.एस. सीरीज वर्ग 3 के स्वतः सूचक गैर-स्वचालित टेबल टाप तोलन उपकरण के माडल का (जिस इसमें इसके पश्चात् माडल कहा गया है) जिसका विनिर्माण मैमर्स साइटिक इंस्ट्रुमेंट्स कंपनी, गाजियाबाद द्वारा किया गया है और जिसे अनुमोदन चिन्ह आई.एन.ई. 09/95/03 समन्वेति किया गया है, अनुमोदन प्रमाणनपत्र प्रकाशित करती है;

माडल (ग्राह्यता देखिए) एक मध्यम यथार्थता (यथार्थता वर्ग 3) का तोलन उपकरण है जिसकी अधिकतम क्षमता 5 किलो-ग्राम और न्यूनतम क्षमता 20 ग्राम है। सत्यापन मापमान अन्तर (ई) 1 ग्राम है। इसमें एक टेयर युक्ति है जिसका व्यक्लनात्मक प्रतिधारण टेयर प्रभाव 100 प्रतिशत है। आधार और प्लेटफार्म धात्विक है। भारग्राही आधताकार आकृति का है जिसका पार्श्व 230×180 मि.मी. है। यह सात खंडीय प्रकाश उत्सर्जन डायोड संप्रदर्शन तोल परिणाम उपर्युक्त करता है। यह उपकरण 230 वोल्ट, 50 हर्टज के प्रत्यावर्ती धारा विद्युत प्रदाय पर प्रचलित होता है।



आकृति

आगे, केन्द्रीय सरकार, यह घोषणा करती है कि माडल के अनुमोदन के दृम प्रमाणपत्र के अन्तर्गत उसी विनिर्माता द्वारा उसी सिद्धान्त के अनुसार और उसी सामग्री से, जिससे अनुमोदित माडल का विनिर्माण किया गया है। विनिर्मित 10 किलोग्राम, 15 किलो-ग्राम, 20 किलोग्राम, 30 किलोग्राम, 50 किलोग्राम और 60 किलोग्राम की अधिकतम क्षमता वाले समरूप मैक, यथार्थता और उसी सीरीज के कार्यकरण वाले, तोलन उपकरण भी हैं।

[फा.सं. डब्ल्यू.एम.-21(35)/94]

राजीव श्रीवास्तव, संयुक्त सचिव

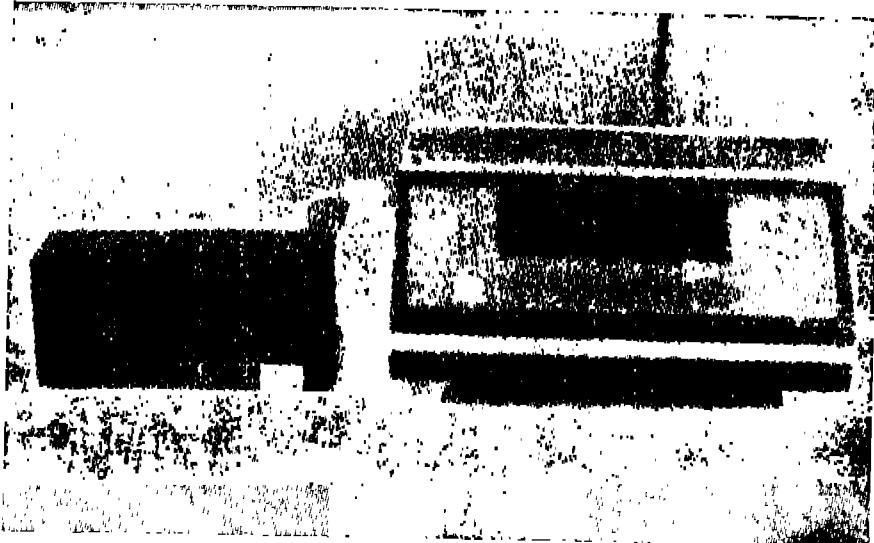
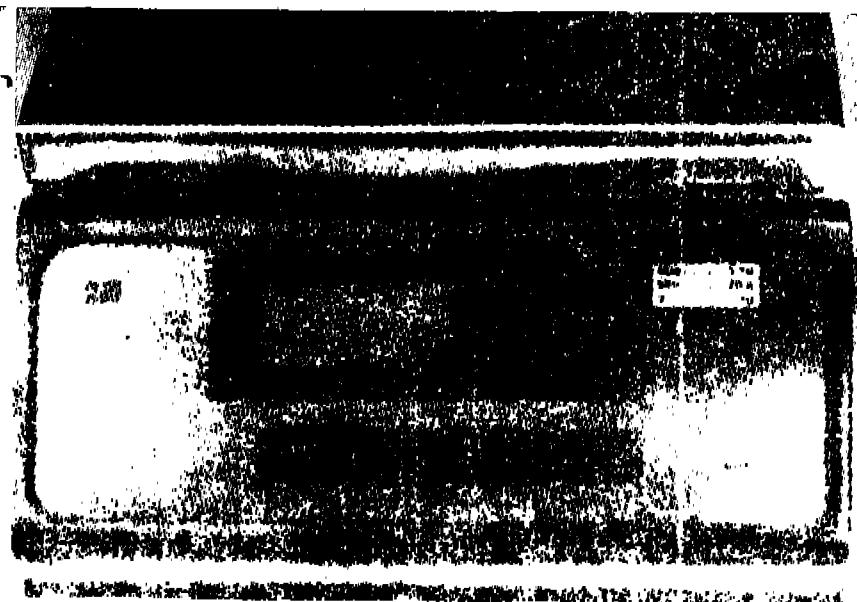
MINISTRY OF CIVIL SUPPLIES, CONSUMER AFFAIRS, AND PUBLIC DISTRIBUTION

New Delhi, the 6th October, 1995

S.O. 2801 :—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report, (see figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of the self-indicating non-automatic table top weighting instrument of type PS series of class III (hereinafter referred to as the Model) manufactured by M/s Scientific Instruments Co. Ghaziabad and which is assigned the approval mark IND/09/95/03;

The Model (see figure) is a medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 5 kilogram and minimum capacity of 20 gram. The verification scale interval (c) is 1 gram. It has a tare device with a 100 per cent substitutive retained tare effect. The base and the platform are metallic. The load receptor is of rectangular shape of sides 230 x 180 millimetre. The seven segment LED display indicates the weighing result. The instrument operates on 230 volts, 50 hertz alternative current power supply.



figure

Further, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 10 kg, 15 kg, 20 kg, 30 kg, 50 kg, and 60 kg manufactured by the same manufacturer in accordance with the same principle and with the same materials with which, the approved Model has been manufactured.

[F. No. WM—21(35)/94]

RAJIV SRIVASTAVA, Lt. Secy.

मानव संसाधन विकास मंत्रालय

(शिक्षा विभाग)

नई दिल्ली, 26 सितम्बर, 1995

का.आ. 2802:—आरोविल प्रतिष्ठान अधिनियम, 1983 की धारा 12 की उपधारा (4) के नियन्त्रणों के अनुमार, श्रीमती अस्तर पटेल द्वारा प्रतिष्ठान के शासी नियाय की मदद्यता से दिया गया त्यागपत्र केंद्रीय सरकार द्वारा 25 सितम्बर, 1995 में रखीकर कर लिया गया है।

2. आरोविल प्रतिष्ठान अधिनियम, की धारा 12 की उपधारा 3 के अनुमार लेफ्टिनेंट गवर्नर शासीक के चैर्जरी, आरोविलियन की आरोविल प्रतिष्ठान के शासी नियाय की मदद्य, श्रीमती अस्तर पटेल के त्याग-पत्र के कारण दृढ़ रिक्ति के प्रति, तुरन्त प्रभाव से नियुक्त किया गया है।

[सं. एफ. 27-28/95-यू.यू.]

डा. रूपा आर. जोशी, निदेशक (यू.यू.)

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Education)

New Delhi, the 26th September, 1995

S.O. 2802.—In terms of Sub-section (4) of Section 12 of the Auroville Foundation Act, 1988, the resignation tendered by Smt. Aster Patel from the membership of the Governing Board of the Foundation has been accepted by the Central Government with effect from 25th September, 1995.

2. In accordance with Sub-section 3 of Section 12 of the Auroville Foundation Act, Lt. General Ashok K. Chatterjee, an Aurovillian, has been appointed as a member of the Governing Board of Auroville Foundation with immediate effect against the vacancy created by the resignation of Smt. Aster Patel.

[F. No. 27-28/95-UU]

DR. ROOPA R. JOSHI, Director (UU)

पैदोलियम और प्राकृतिक गेम मंत्रालय

शुद्धिकार

नई दिल्ली, 6 अक्टूबर, 1995

का.आ. 2803:—भारत के अमाधारण गजपत्र दिनांक मार्च 9, 1995 में पैदोलियम और खनिज पार्षद लाईन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 6 की उपधारा (1) के अन्तर्गत हिन्दी भाषा में प्रकाशित विमलिनिधित्र अधिगृहनार्थी के साथ दी गई अनुसूची में उल्लिखित ग्राम के नाम निम्नानुमार पढ़े जायें।

गजपत्र के अनुमार निम्न संशोधन के अनुमार पढ़ा जायें

राजपत्र दिनांक	अनुसूची में उपा	ग्राम का सही नाम
9-3-95 की	ग्राम का नाम	
पृष्ठ संख्या		

3	शुरवेकुना	शुरवाकला
8	जामरा	जमरा
13	चिरतारा	चितारा
16	डोंगहाई	डोंडहाई
22	बीरमेखेडी	बीरमखेडी
25	तिर्गीगा	तिधरीगा
28	नेतवाल	नेतवाल

[संख्या-एन्स. - 14016/7/94 जी.पी.]

अधेन्दु सेन, निदेशक

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 20 सितम्बर, 1995

का. आ. 2804.—केन्द्रीय सरकार, होम्योपैथी केन्द्रीय परिषद् अधिनियम 1973 (1973 का 59) की धारा 13 की उपधारा (2) द्वारा प्रदत्त चिकित्सों का प्रयोग करने हुए, केन्द्रीय होम्योपैथी परिषद् से परामर्श करने के पश्चात् उक्त अधिनियम की इसी अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात्—

उक्त अनुसूची में “कनटिक” शीर्षक के अन्तर्गत गुलबर्गा विश्वविद्यालय से संबंधित क्रम सं. 7B के स्तम्भ 4 की प्रविष्टि के स्थान पर “1990” में “1995” बदल दिये जाएँ।

[वी. 27021/25/95—होम्यो/एच. पी. सी.]

कंवल दास, अवर मचिव (आईएमएस)

टिप्पण :—

होम्योपैथी केन्द्रीय परिषद् अधिनियम, 1973 (1973 का 59) की इसी अनुसूची 20 दिसंबर, 1973 को भारत के राजपत्र असाधारण, भाग-2, खंड 1 (सं. 76) में प्रकाशित की गई थी और उसमें बाद में निम्नलिखित के तहत संशोधन किए गये थे :—

का.आ. 3325 दिनांक 4-11-1978

का.आ. 1517 दिनांक 26-2-1983

का.आ. 1481 दिनांक 12-3-1983

का.आ. 3099 दिनांक 21-6-1985

का.आ. 2048 दिनांक 24-3-1986

का.आ. 2270 दिनांक 24-5-1986

का.आ. 2449 दिनांक 1-8-1990

का.आ. 2501 दिनांक 1-8-1990

का.आ. 2502 दिनांक 21-8-1990

का.आ. 710 दिनांक 20-2-1992

का.आ. 891 दिनांक 5-3-1992

का.आ. 1210 दिनांक 23-4-1992

का.आ. 978 दिनांक 28-4-1993

का.आ. 1325 दिनांक 17-5-1994; और

का.आ. 2363 दिनांक 24-10-1994

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 20th September, 1995

S.O. 2804.—In exercise of the powers conferred by sub-section (2) of Section 13 of the Homoeopathy Central Council Act, 1973 (59 of 1973), the Central Government, after consulting the Central Council of Homoeopathy, hereby makes the following further amendment in the Second Schedule of the said Act, namely :—

In the said Schedule, under the heading “KARNATAKA” against serial number 7-B, relating to the Gulbarga University in column 4, for the entry, the entry ‘From 1990 to 1995’ shall be substituted.

[No. V-27021/25/95-Homeo (HFC)
KANWAL DAS Under Secy. (ISM)]

Note.—The Second Schedule to the Homoeopathy Central Council Act, 1973 (59 of 1973) was published as the part of the said Act in the Gazette of India Extra-ordinary, Part-II, Section 1 (No. 76), dated the 20th December, 1973 and subsequently amended vide :

S.O. 2325, dated 4-11-1978
S.O. 1517, dated 26-2-1983
S.O. 1481, dated 12-3-1983
S.O. 3099, dated 21-6-1985
S.O. 2048, dated 24-3-1986
S.O. 2270, dated 24-5-1986
S.O. 2449, dated 1-8-1990
S.O. 2501, dated 1-8-1990
S.O. 2502, dated 21-8-1990
S.O. 710, dated 20-2-1992
S.O. 891, dated 5-3-1992
S.O. 1210, dated 23-4-1992
S.O. 978, dated 28-4-1993
S.O. 1325, dated 17-5-1994; and
S.O. 2363, dated 24-10-1994

(स्वास्थ्य विभाग)

आदेश

नई दिल्ली, 22 सितम्बर, 1995

का. आ. 2805.—ग्लासगो विश्वविद्यालय (यूनाइटेड किंगडम) द्वारा प्रदत्त एम बी सी-एच बी चिकित्सा अर्हता भारतीय चिकित्सा परिषद् अधिनियम 1956 (1956 का 102) की धारा 14 के अन्तर्गत एक मान्यताप्राप्त चिकित्सा अर्हता है;

श्री और डा. (मूर्खी) थाम्पसन किस्टीन जोश जिनके पास उक्त अर्हता है, लेप्रोसी मिशन अम्बाल, पुर्णिया, पश्चिम बंगाल से संबद्ध है;

अतः श्री केन्द्रीय सरकार एनडब्ल्यूआर उक्त अधिनियम की धारा 14 की उपधारा (1) के खंड (ग) के अनुसरण में :—

(क) 30 सितम्बर, 1995 से एक वर्ष की अवधि, अथवा

(घ) वह अवधि जिसके दौरान डा. (मूर्खी) थाम्पसन किस्टीन जोश को लेप्रोसी मिशन अम्बाल, पुर्णिया, पश्चिम बंगाल से सम्बद्ध किया जाता है,

जो भी कम हो को उस अवधि के रूप में विनिर्दिष्ट किया जाता है जिसमें उक्त चिकित्सक की मेडिकल प्रैक्टिस सीमित होगी।

[संलग्न वी-11016/3/94-एम ई (यू. जी.)]
एम. के. मिशा, डेस्क अधिकारी

(Department of Health)

ORDER

New Delhi, the 22nd September, 1995

S.O. 2805.—Whereas the medical qualification M.B. Ch. B. granted by University of Glasgow (United Kingdom) is a recognised medical qualification for the purpose of the

Indian Medical Council Act, 1956 (102 of 1956) under Section 14 of the said Act;

And whereas Dr. (Ms.) Thompson Kirsteen Joy who possesses the said qualification is attached to the Leprosy Mission Hospital, Purulia, West Bengal.

Now, therefore, in pursuance of clause (c) of sub-section (1) of Section 14 of the said Act, the Central Government hereby specifies :—

(a) a period of one year from the 30th of September 1995, or

(b) a period during which Dr. (Ms.) Thompson Kirsteen Joy is attached to the Leprosy Mission Hospital, Purulia, West Bengal,

whichever is shorter, as the period to which the medical practice of the said doctor shall be limited.

[No. V-11016/3/94-ME (UG)]

S. K. MISHRA, Desk Officer

आदेश

नई दिल्ली, 22 सितम्बर, 1995

का.आ. 2806.—केन्द्रीय सरकार भारतीय चिकित्सा परिषद अधिनियम, 1956 (1956 का 102) की धारा 14 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए भारतीय चिकित्सा परिषद से परामर्श करने के पश्चात एतद्वारा निदेश देती है कि ग्लासगो विश्वविद्यालय (यूनाइटेड किंगडम) द्वारा प्रदत्त “एम.बी.सी.—एच बी चिकित्सा अर्हता उस अधिनियम के प्रयोजन से मान्यताप्राप्त चिकित्सा अर्हता होगी।

[संख्या वी-11016/3/94-एम ई (यू.जी.)]

एम. के. मिश्रा, डेस्क अधिकारी

ORDER

New Delhi, the 22nd September, 1995

S.O. 2806.—In exercise of the powers conferred by sub-section (1) of Section 14 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consultation with the Medical Council of India hereby directs that the medical qualification “M.B. Ch. B.” granted by the University of Glasgow (United Kingdom) shall be recognised medical qualification for the purposes of that Act.

[No. V-11016/3/94-ME (UG)]

S. K. MISHRA, Desk Officer

आदेश

नई दिल्ली, 28 सितम्बर, 1995

का.आ. 2807.—“काबुल विश्वविद्यालय द्वारा प्रदान की गई एम.डी.” आयुर्विज्ञान अर्हता भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) के प्रयोजन के लिए, उक्त अधिनियम की धारा 14 के अधीन एक मान्यताप्राप्त आयुर्विज्ञान अर्हता है;

और डा. प्रमिला कक्कर, जिसके पास उक्त अर्हता है, उस समय मूलचन्द खेराती राम अस्पताल और आयुर्वेदिक रिसर्च इंस्टीट्यूट, लाजपत नगर-III, नई दिल्ली से संलग्न हैं।

अतः यह, केन्द्रीय सरकार, उक्त अधिनियम की धारा 14 की उपधारा (1) के खंड (ग) का अनुसरण करते हुए,—

(क) इस अधिसूचना के जारी होने की तारीख से दो वर्ष की अवधि को, या

(ख) उस अवधि को, जिसके दौरान डा. प्रमिला कक्कर मूलचन्द खेराती राम अस्पताल और आयुर्वेदिक रिसर्च इंस्टीट्यूट, लाजपत नगर-III, नई दिल्ली से संलग्न हैं,—

इनमें से जो भी कम हो, वह अवधि विनिर्दिष्ट करती है जिस तक उक्त डाक्टर का चिकित्सा व्यवसाय सीमित होगा।

[सं. वी 11016/18/94-एम ई (यू.जी.)]

एस.के. मिश्रा, डेस्क अधिकारी

ORDER

New Delhi, the 28th September, 1995

S.O. 2807.—Whereas the medical qualification “M.D. granted by University of Kabul” is a recognised medical qualification for the purpose of the Indian Medical Council Act, 1956 (102 of 1956) under Section 14 of the said Act;

And whereas Dr. Parmila Kakkar who possesses the said qualification is attached to the Moolchand Kharaiti Ram Hospital and Ayurvedic Research Institute, Lajpat Nagar III, New Delhi;

Now, therefore, in pursuance of clause (c) of sub-section (1) of Section 14 of the said Act, the Central Government hereby specifies :—

(a) a period of two years from the date of issue of this notification, or

(b) a period during which Dr. Parmila Kakkar is attached to the Moolchand Kharaiti Ram Hospital and Ayurvedic Research Institute, Lajpat Nagar III, New Delhi,

whichever is shorter, as the period to which the medical practice of the said doctor shall be limited.

[No. V-11016/18/94-ME (UG)]

S. K. MISHRA, Desk Officer

नई दिल्ली, 28 सितम्बर, 1995

का.आ. 2808.—केन्द्रीय सरकार, भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 14 की उपधारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय आयुर्विज्ञान परिषद से परामर्श के पश्चात यह निदेश देती है कि “काबुल विश्वविद्यालय, अफगानिस्तान द्वारा प्रदान की गई एम.डी.” आयुर्विज्ञान अर्हता उक्त अधिनियम के प्रयोजनों के लिए मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी।

[सं. वी. 11016/18/94-एम ई (यू.जी.)]

एस.के. मिश्रा, डेस्क अधिकारी

New Delhi, the 28th September, 1995

S.O. 2808.—In exercise of the powers conferred by sub-section (1) of section 14 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government after consultation with the Medical Council of India, hereby directs that the medical qualification "M.D. granted by the University of Kabul, Afghanistan" shall be a recognised medical qualification for the purposes of the said Act.

[No. V. 11016/18/94-ME-UG]

S. K. MISHRA, Desk Officer

आदेश

नई दिल्ली, 28 सितम्बर, 1995

का.आ. 2809.—“काबुल विश्वविद्यालय द्वारा प्रदान की गई एम.डी.” आयुविज्ञान अर्हता भारतीय आयुविज्ञान परिषद अधिनियम, 1956 (1956 का 102) के प्रयोजन के लिए उक्त अधिनियम की धारा 14 के अधीन एक मान्यताप्राप्त आयुविज्ञान अर्हता है;

और डा. प्रेमी हरदर्शन सिंह, जिनके पास उक्त अर्हता है, इस समय गुरु हरकृष्णन अस्पताल, गुरुद्वारा बंगला साहिब, नई दिल्ली से संलग्न है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 14 की उपधारा (1) के खंड (ग) का अनुसरण करते हुए,—

- (क) इस अधिमूलन के जारी होने की तारीख से दो वर्ष की अवधि को, या
- (ख) उस अवधि को, जिसके दौरान डा. प्रेमी हरदर्शन सिंह गुरु हरकृष्णन अस्पताल, गुरुद्वारा बंगला साहिब, से संलग्न हैं,

इनमें से जो भी कम हो, वह अवधि विनिर्दिष्ट करती है जिस तक उक्त डाक्टर का नियित्वा व्यवसाय सीमित होगा।

[सं. वी 11016/18/94-एम ई (यू जी)
एस.के. मिश्रा, डेस्क अधिकारी]

ORDER

New Delhi, the 28th September, 1995

S.O. 2809.—Whereas the medical qualification "M.D. granted by University of Kabul" is a recognised medical qualification for the purpose of the Indian Medical Council Act, 1956 (102 of 1956) under Section 14 of the said Act;

And whereas Dr. Premi Hardarshan Singh who possesses the said qualification is attached to the Guru Harkrishan Hospital, Gurudwara Bangla Sahib, New Delhi.

Now, therefore, in pursuance of clause (c) of sub-section (1) of Section 14 of the said Act, the Central Government hereby specifies:—

- (a) a period of two years from the date of issue of this notification, or
- (b) a period during which Dr. Premi Hardarshan Singh is attached to the Guru Harkrishan Hospital, Gurudwara Bangla Sahib, New Delhi, whichever is shorter, as the period to which the medical practice of the said doctor shall be limited.

[No. V-11016/18/94-ME (UG)]
S. K. MISHRA, Desk Officer

कृषि मंत्रालय

(कृषि अनुसंधान तथा शिक्षा विभाग)

नई दिल्ली, 26 सितम्बर, 1995

का.आ. 2810.—केन्द्रीय सरकार, कृषि मंत्रालय, कृषि अनुसंधान तथा शिक्षा विभाग, राजभाषा (संघ) के शासकीय प्रयोजनों के लिए प्रयोग (नियम, 1976 के नियम 10) के उपनियम (4) के अनुसरण में एतद्वारा भारतीय कृषि अनुसंधान परिषद के राष्ट्रीय शीत जल मत्स्य पालन अनुसंधान केन्द्र जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[संख्या 13-5/95-हिन्दी]

आर. पी. सरोज, अबर सचिव

MINISTRY OF AGRICULTURE

(Department of Agricultural Research and Education)

New Delhi, the 26th September, 1995

S.O. 2810.—In pursuance of Sub-Rule 4 of Rule 10 of the Official Language (Use of Official purpose of the Union) Rule 1976, the Central Government, Ministry of Agriculture, Department of Agricultural Research and Education hereby notifies the National Research Centre on cold water fisheries (ICAR), where more than 80 percent of Staff have acquired the working knowledge of Hindi.

[No. 13-5/95-Hindi]

R. P. SAROJ, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 27 सितम्बर, 1995

का.आ. 2811.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार जिला अभियन्ता, सर्वाइमाधोपुर के प्रबंधसंबंध के संबद्ध नियोजकों और उमके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकारण कोटा के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-95 को प्राप्त हुआ था।

[संख्या एन-40012/23/89-डी-II (बी)]

बी.एम.डेविड, हैम्स्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 27th September, 1995

S.O. 2811.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Kota as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divl. Officer Telecom and their workmen, which was received by the Central Government on 27-9-95.

[No. L-40012/23/89-D.II (B)]

B. M. DAVID, Desk Officer

अनुच्छेद

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा/राज. /

निर्देश प्रकरण क्रमांक : औ. न्या. (केन्द्रीय) - 25/89

दिनांक स्थापित : 18-12-89

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश सं.

एल. 40012/23/89-डी-2 (बी) दिनांक

11-12-89

औद्योगिक विवाद अधिनियम, 1947

मध्य

धनराज कलावा निवासी माताजी के मन्दिर के पास,
खेड़ली फाटक, कोटा।

—प्रार्थी अभिक

एवं

दूर संचार जिला अभियन्ता, सवाईमाधोपुर।

—प्रतिपक्षी नियोजक

उपस्थित

श्री आर.के. चाचान,
आर.एच.जे.एस.

प्रार्थी अभिक की ओर से प्रतिनिधि : श्री एन.के. निवासी
प्रतिपक्षी नियोजक की ओर से : श्री एच.एल. गुप्ता
प्रतिनिधि

अधिनिर्णय दिनांक : 7-7-95

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा निम्न निर्देश औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त “अधिनियम” रो सम्बोधित किया जावेगा) की धारा 10(1)(घ) व उपधारा (2-क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :—

“क्या दूर संचार अभियन्ता, सवाईमाधोपुर द्वारा धनराज कलावा, दैनिक भोगी टाईपिस्ट को 30-7-87 से नौकरी से हटाने का कार्य वैध व न्यायोचित है ? यदि नहीं तो कर्मचारी को क्या राहत की जानी चाहिए ?”

2. निर्देश न्यायाधिकरण में प्राप्त होने पर दर्ज रजिस्टर किया गया व पक्षकारों को सूचना जारी की गयी। प्रार्थी धनराज द्वारा प्रस्तुत क्लेम स्टेटमेंट के अनुसार संक्षेप में स्थिर इस प्रकार है कि प्रार्थी दूर संचार जिला अभियन्ता, सवाईमाधोपुर (जिसे तदुपरान्त “प्रतिपक्षी नियोजक” से सम्बोधित किया जावेगा), के यहां दैनिक वेतन टाईपिस्ट के पद पर दि. 16-9-86 से नियोजित किया गया एवं

30-7-87 को उसे अबानक बिना कोई कारण बताये व बिना किसी पूर्व सूचना के नौकरी से निकाल दिया। इस प्रकार प्रार्थी ने प्रतिपक्षी के यहां नियोजन में रहकर 16-9-86 से 29-7-87 तक निरन्तर कार्य करते हुए एक कलैन्डर वर्ष में 240 दिन से अधिक समय तक कार्य कर लिया। प्रार्थी को नियोजक ने अधिनियम की धारा 25-एफ के प्रावधानान्तर्गत एक माह का नोटिस अथवा नोटिस वेतन व छंटनी का मुआवजा नहीं दिया और न ही प्रस्तावित किया। इस प्रकार नियोजक ने प्रार्थी को अवैध प्रकार से नौकरी से निकाल दिया। अतः प्रार्थी पिछले सम्पूर्ण वेतन व अन्य समस्त सुविधाओं सहित नौकरी पर बहाल किया जावे।

3. प्रतिपक्षी नियोजक ने क्लेम का विरोध करते हुए जवाब में यह अंकित किया है कि प्रार्थी को दैनिक वेतन टाईपिस्ट के पद पर नियोजन कार्यालय के माध्यम से नियोजित नहीं किया, नियोजक द्वारा केवल दैनिक वेतन भोगी के रूप में प्रार्थी को नौकरी पर रखा था और प्रार्थी 29-7-87 के बाद स्वयं ही कार्य पर नहीं आया। प्रार्थी ने प्रतिपक्षी के यहां सितम्बर 86 से मार्च 87 व 5/87 से 7/87 तक कुल 228 दिन ही कार्य किया जिसका उसे भुगतान कर दिया गया। अतः प्रार्थी कोई वेतन, भत्ता व नौकरी पाने का अधिकारी नहीं है और उसका क्लेम खारिज किया जावे।

4. प्रार्थी धनराज ने साथ्य में अपना स्वयं का शपथ-पत्र प्रस्तुत किया है जिससे प्रतिपक्षी नियोजक प्रतिनिधि द्वारा जिरह की गयी है। प्रतिपक्षी की ओर से कोई साथ्य प्रस्तुत नहीं की गयी। वहम मुत्ती गयी व पत्रावती का अवसोकन किया गया।

5. प्रार्थी के विद्वान प्रतिनिधि की ओर से यह बहस की गयी है कि प्रार्थी ने प्रतिपक्षी के यहां 16-9-86 से 29-7-87 तक निरन्तर दैनिक वेतन पर टाईपिस्ट के पद पर कार्य किया व उसे प्रतिपक्षी ने बिना कोई कारण बताये व बिना किसी पूर्व सूचना के 30-7-87 को नौकरी से निकाल दिया और उसे कोई लिखित आदेश नहीं दिया गया। चूंकि प्रार्थी ने इस अवधि में लगातार कार्य करके एक कलैन्डर वर्ष में 240 दिन से अधिक कार्य किया है और उसे प्रतिपक्षी द्वारा सेवा से हटाने से पूर्व अधिनियम की अपेक्षित धारा की पालना नहीं की गयी, अतः उसे सेवा से पूर्यक करना अनुचित बारार देने हुए समस्त पिछले वेतन व अन्य सुविधाएं प्रदान करते हुए पुनः सेवाये बहाल किया जावे।

6. प्रतिपक्षी की ओर से विद्वान प्रतिनिधि ने यह बहस की है कि प्रार्थी ने प्रतिपक्षी के यहां दैनिक वेतन टाईपिस्ट के पद पर कार्य किया है परन्तु उसका नियोजन निम्न नुसार नहीं किया गया। प्रार्थी स्वयं नौकरी पर उपस्थित नहीं हुआ। इसलिए वह कोई राहत प्राप्त करने का अविभाग नहीं है।

7. प्रतिपक्षी की ओर से कोई साक्ष्य प्रस्तुत नहीं हुई है, जबकि प्रार्थी ने अपने गपथ-पत्र में कहा है कि उसने 16-9-86 से 29-7-87 तक लगातार कार्य करके 240 दिन से अधिक कार्य प्रतिपक्षी के यहां किया है एवं 30-7-87 को प्रतिपक्षी ने विना कोई कारण बनाये व विना किसी पूर्व सूचना के नीकरी से निकाला है। प्रार्थी ने प्रतिपक्षी को नीकरी पर रखे जाने वाले प्रार्थना-पत्र भी 6-8-87 तो यू.पी.सी. डाक से भेजा जिसकी कि प्रति व यू.पी.सी.रसीद द ममशः प्रदर्श उड़त्यू. 1 व 2 हैं परन्तु प्रतिपक्षी ने इसका कोई उत्तर नहीं दिया। इसके बाद महा-प्रबन्धक विभाग को भी प्रार्थना-पत्र 14-10-87 को भेजा जिसकी प्रति प्रवर्ष उड़त्यू. 3 व पोस्टल रसीद प्रदर्श उड़त्यू. 4 हैं, परन्तु उसे कोई प्रत्युत्तर नहीं मिला। प्रार्थी ने स्पष्ट रूप से कहा है कि उसे सेवा में हटाने से पूर्व नियमानुसार कोई नोटिस अथवा नोटिस बेतन व छंटनी का मुआवजा प्रतिपक्षी द्वारा नहीं मिला। इस प्रकार इस साक्ष्य के विपरीत प्रतिपक्षी की ओर से कोई प्रलेखी या मौखिक साक्ष्य प्रस्तुत कर कोई खण्डन नहीं किया गया है जिसमें कि प्रार्थी के कथन पर अविश्वास किया जा सके। अतः प्रार्थी द्वारा प्रस्तुत साक्ष्य व प्रलेखी साक्ष्य से यह सिफाराना जाता है कि उसने प्रतिपक्षी के यहां 16-9-86 से 29-7-87 तक लगातार कार्य करके 240 दिन से अधिक कार्य एक कर्लेंग्डर वर्ष में पूर्ण कर लिये थे और उसे प्रतिपक्षी द्वारा 30-7-87 से सेवा में हटाने के पूर्व अधिनियम की अपेक्षित धाराओं की पालनान्तर्गत कोई नोटिस अथवा नोटिस बेतन व छंटनी का मुआवजा नहीं दिया गया य न प्रस्तावित किया, ऐसी सूत्र में प्रार्थी को 30-7-87 से नीकरी से हटाने का कार्य बंध व न्यायोचित नहीं माना जा सकता और फलस्वरूप प्रार्थी पिछले सम्पूर्ण बेतन व सेवा की निरन्तरता तथा अन्य सभी लाभ प्राप्त करते हुए पुनः सेवा में लिये जाने का अधिकारी घोषित होने योग्य पाया जाता है।

8. उपरोक्त भम्पूर्ण विवेचन के आधार पर भारत सरकार, धर्म मंत्रालय, नई दिल्ली द्वारा सम्मेलित निर्देश को इस प्रकार उत्तरित किया जाता है कि प्रतिपक्षी नियोजनः हूर संचार जिला अधिकारी, सवाई माधोपुर द्वारा प्रार्थी धनराज काठावा को दिनांक 30-7-87 से नीकरी से हटाने का कार्य बंध व न्यायोचित नहीं है, फलस्वरूप प्रार्थी पिछले सम्पूर्ण बेतन, सेवा की निरन्तरता व अन्य सभी मुक्तियाँ दी गयी हैं।

इस अधिनियम को समुचित सरकार को नियमानुसार प्रकाशनार्थ भिजवाया जावे।

मार. के. चाचान, न्यायाधीश

नई दिल्ली, 27 सितम्बर, 1995

का.प्रा. 2812—ओर्डरिंग विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बम्बई पोर्ट ट्रस्ट के प्रबन्धतंत्र के सबूत नियोजकों और उनके कर्मकारों के बीच, अमुंबांध में निर्दिष्ट ओर्डरिंग विवाद में केन्द्रीय सरकार श्रीरामगिरि अधिकारण नं. 2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-9-95 को प्राप्त हुआ था।

[संख्या-एल-31012/33/92-प्राइ-ग्रार (विवाद)]
बौ००८० डेविड, डैस्ट्रॉक्युलेशन अधिकारी

New Delhi, the 27th September, 1995

S.O. 2812.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bombay Port Trust and their workmen, which was received by the Central Government on 25-9-1995..

[No. L-31012/33/92-IR (Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT:

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/85 of 1993

Employers in relation to the management of Bombay Port Trust.

AND

Their workmen.

APPEARANCES:

For the Employers : Shri M. B. Anchan, Advocate.

For the Workmen : Shri Arun D. Nimbalkar, Advocate.

Bombay, dated 30th August, 1995

AWARD PART-I

The Government of India, Ministry of Labour by its letter No. L-31012/33/92-IR(Misc.) dated 5/12-10-1993 has referred to the following Industrial Dispute for adjudication :

“Whether the action of the management of Bombay Port Trust, Bombay in terminating the services of Shri C. A. Chavan, Watchman No. 392 of BPT Security Organisation w.e.f. 19-6-89 is just, legal and proper? If not, to what relief is the workman entitled to?”

2. Chandrakant Amruta Chavan was working as a Watchman with Ticket No. 392 in Security Department. He worked from August 1975 to 19th of June, 1989 till his removal from the services. It is submitted that he had unblemished record.

3. The workman and 19 others were employees of the respondent of the Bombay Port Trust, and were attached to Bombay Port Trust Container Yard, Chembur. The workman was a watchman and others were in different capacities. In

all 20 employees were charge-sheeted for the commitment of misconduct and were issued a Show Cause Notice dated 16th December, 1987. Later on they were suspended from their respective duties. The workman was one of them. In reply to the Show Cause Notice they contended that the charges levelled against them are untrue. Ultimately, one Mr. D. N. Duthankar, Advocate was appointed as the Inquiry Officer for conducting the inquiry into the alleged charges. The charge against the workman and 19 others were that they stolen away the portion of the consignment worth 22 lakhs of rupees between the night of 13th and 14th of February, 1987. After the Departmental Inquiry the Inquiry Officer found the workman guilty. On this report he was removed from the services on 19-6-89.

4. The workman preferred an appeal on 17-8-89 which came to be dismissed on 24-1-90. He thereafter filed a review application on 21-8-90 which met with the same faith.

5. The workman pleaded that the Appellate Authority had not given any reasons for rejecting the appeal. Further more he was discriminated between two workers as the appeals of some of them were allowed. It is submitted that the admissions given by the witnesses were wrong by the Inquiry Officer. It is asserted that the store which was stated by the accused was accepted by the Inquiry Officer, even though there was no opportunity for cross-examination of these accused. It is averred that material witnesses were not examined before the Inquiry Officer even though their statement were relied by him. It was pleaded that for all these reasons the inquiry which was held against the workman is against the principles of natural justice. It is pleaded that there is no application of mind by the Inquiry Officer resulting into perversity of findings.

6. For all these reasons the workman prayed he may be reinstated in service with continuity and back wages.

7. The Management by their Written Statement (Ex. 4) denied all the allegations of the workman. It is asserted that all the principles of natural justice were followed in the Departmental Inquiry. It is asserted that the findings of the Inquiry Officer are based on the evidence before him. It is submitted that for all these reasons there is no merit in the contentions of the worker and reference may be answered in favour of the Management. —

8. I am treating issue Nos. 1 and 2 as preliminary issues. The issues and my findings thereon are as follows:

ISSUES	FINDINGS
1. Whether it is proved that the Domestic Inquiry held against the workman was against the principles of natural justice?	Yes
2. Whether it is proved that the findings of the Inquiry Officer are perverse?	Yes

REASONS

9. It is not in dispute that the workman alongwith other 19 were charge-sheeted on 16th February, 1987 for a grave misconduct. It was alleged that the workman when posted at Chembur Yard, during the night of 14th February, 1987 he had shown gross negligent and woeful delegations dereliction of duty by unjustified unauthorised removal of 367 cartoons of polyester filament yarn valued at Rupees 22 lakhs which took place from Chembur Yard during the period 0.00 hours to 2.30 hours on 14th February, 1987 at which time he was posted there.

10. Chandrakant Amruta Chavan (Ex. 6) affirmed that he was suspended during the pending inquiry. After the inquiry he was removed from the services. In the cross-examination he accepts that he received the charge-sheet and had replied the same, he had not disputed of having received all the documents along with the list of witnesses. It is not in dispute that Mr. Shetty, the General Secretary of the Union defended him, he cross-examined the Management witnesses. His final statement was filed by the representative. He affirmed that after the whole of the Departmental Inquiry was given to him and he had replied the same. After the removal he was allowed to file the appeal which was rejected and further his review petition was also rejected.

11. It is not in dispute that some of the charge-sheeted delinquents were dismissed, some were removed and some were compulsorily made to retire. It is pertinent to note that after the appeals and review petition were dismissed by the Central Government some of the delinquent preferred to file writ petition bearing Nos. 3561 of 1991, 432 of 1992, 950 of 1992, 952 of 1992 in the High Court of judicature at Bombay. Those writs were filed under Article 226 of the Constitution and in the Original Civil Jurisdiction. It is pertinent to note that even though the present workman was concerned he choose to prefer to come to this Tribunal by receiving an Industrial Dispute. It is not in dispute that the relief which is sought in those writ petition is same relief which is sought by the present worker. The relief is sought on the ground that the inquiry which was held against the workman and others was against the principles of natural justice. It is also prayed in the writ that the decision given by the Appellate Authority is incorrect. Along with the written argument which is filed by the workman, he filed the copy of the judgement delivered by His Lordships V. H. Bhairavia J. In those writ petition His Lordship have come to the conclusion that the Domestic Inquiry which was held against the delinquent was against the principles of natural justice. The present workman is also concerned with the said Domestic Inquiry. As His Lordship has come to the conclusion that the said Inquiry is against the principles of natural justice, there is nothing remains for this Tribunal to discuss. I, therefore, answered the issue accordingly.

12. As I have come to the conclusion that the domestic Inquiry which was held against the workman was against the principles of natural justice, naturally the conclusion drawn by the Inquiry Officer was perverse. His Lordship has given reasons for coming to the conclusion that there is no proper substantive evidence of the witness. It is also observed by His Lordship that the reasons given by the Inquiry Officer are not correct. For all these reasons the second issue has to be answered accordingly.

13. As I have come to the conclusion that the Departmental Inquiry which was held against the workman was against the principles of natural justice in view of several decision of the Supreme Court the Management has given an opportunity to lead evidence and substantiate their action. In the result I pass the following order:

ORDER

1. The Departmental Inquiry which was held against the workman is against the principles of natural justice.
2. The findings given by the Inquiry Officer are perverse.
3. The Management is allowed to lead evidence in support of their action.

S. B. PANSE, Presiding Officer

नई दिल्ली, 28 सितम्बर, 1995

का.प्रा. 2813—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की घारा 17 के अनुसरण में, केन्द्रीय सरकार ऐपर इंडिया, बम्बई के प्रबंधतात्व के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट प्रौद्योगिक विवाद में, केन्द्रीय सरकार प्रौद्योगिक अधिकरण, कम-शम्भव्यात्मक नं. 1, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-95 को प्राप्त हुआ था।

[संख्या-11011/3/88-डी 2(बी)/3-डी (कोल-1)]
ब्रज मोहन, डीस्क प्रधिकारी

New Delhi, the 28th September, 1995

S.O. 2813.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India, Bombay and their workmen, which was received by the Central Government on 27-9-95.

[No. L-11011/3/88 D.II(B)/III(B)/(Coal-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R. S. Verma, Presiding Officer.

REFERENCE NO. CGIT-1/44 OF 1988

PARTIES :

Employers in relation to the management of Air-India, Bombay

AND

Their Workmen

APPEARANCES :

For the Management : Shri Swamy, Advocate.
For the Workmen : Ms. Samant, Advocate.

INDUSTRY : Airlines STATE : Maharashtra

Bombay, dated 13th September, 1995

AWARD

The following dispute has been referred to this Tribunal by the appropriate Government for adjudication :

"Whether the action of the management of Air India, Bombay in terminating the services of Shri S. J. Joshi, and Shri S. B. Gandmale, casual workmen with effect from 16th July, 1985 and 25th Jan., 1986 respectively is legal and justified. If not, what relief these workmen are entitled to ?"

2. The facts pertaining to case of Shri S. J. Joshi may first be stated. Shri S. J. Joshi joined the services of Air India as a casual labour on 7th March 1980 in the Commercial Department at Cargo complex Bombay. The case of the workman is that he worked on that post continuously and uninterruptedly for a period of 5-1/2 years and during this period he performed his duties to the fullest satisfaction of his superiors. On 26th January, 1983 Shri S. J. Joshi was interviewed for the post of cleaner/Loader/handyman and subsequently was medically examined by the Air India's Medical Officer for the said post. On 17th January 1983 he was informed that Air India was unable to consider him for the employment in the Corporation as he did not meet with their medical standards. His case further is that in spite of this Shri S. J. Joshi continued to remain under the employment of Air India as a Loader on a casual basis in the Cargo till 16th July, 1985 i.e. for a period of one year and 7 months when his services were terminated. His service during the aforesaid period was continuous and uninterrupted. His services were terminated abruptly on 16th July, 1985 without assigning any reasons and without complying with the mandatory provisions of Ss. 25F, 25G & 25-H of the Industrial Disputes Act, 1947. On the basis of aforesaid averments it was prayed that termination of the services of Shri S. J. Joshi may be set aside and he may be ordered to be reinstated with full backwages with effect from 16th July, 1985.

3. Now I may state the case of workman Shri S. B. Gandmale. Shri Gandmale claims to have joined the services of Air India as a Casual Loader on 7th May, 1978. It is pleaded that he worked continuously and uninterruptedly for a period of 4-1/2 years. During this period he performed his duties to the fullest satisfaction of his superiors. On July 13, 1982 Shri Gandmale was offered a post of Loader on probationary basis subject to his being declared medically fit. Shri Gandmale was medically examined by the medical Officer of the Air India Corporation who referred him to the

Municipal Corporation of Greater Bombay's KEM Hospital. Dr. A. V. Bawaliakar at the KEM Hospital certified the workman fit to resume his duties as a Loader. Not satisfied with the report of the Dr. A. V. Bawaliakar, the Air India referred the workman to Jaslok Hospital Bombay where he was examined by Dr. J. K. Shana. Thereafter on 28th August, 1982 Shri Gandmale was informed that the Air India was unable to consider him for employment in the Corporation due to alleged medical unfitness. The case of this workman is that he continued to serve Air India as a Loader until September, 1982 and his services were terminated without assigning any reasons on 25th September, 1982. The case of the workman is that his services were terminated allegedly and without complying with the provisions of Sections 25F, 25G & 25H of the Industrial Disputes Act. It was further pleaded that this workman was reappointed as a loader on or about 15th February, 1984 and his services were again terminated on 24-1-1986. It was prayed that the termination of his services be set aside and his reinstatement be ordered with backwages w.e.f. 25th January, 1986. It was also prayed that consequential benefits be also granted.

4. The Air India Corporation has opposed the claim of the two workmen. The case of the Corporation is that it is a statutory undertaking and vacancies under the Corporation can be filled up subject to vacancies being available in accordance with the relevant Regulations. There is no position of Casual Labour under the Corporation and Casual Loaders are appointed on daily basis depending upon the exigencies of work of a particular day viz. as and when regular workmen remain absent suddenly. It is pleaded that on account of large number of workmen remaining absent everyday, such persons who are readily available from outside the gate are engaged on daily basis. They are paid wages on daily basis. It was denied that Shri S. J. Joshi or Shri Gandmale were appointed on the post of loaders as pleaded by the workmen. In both the cases it has been pleaded that the workmen were employed on day to day basis. Employment in a permanent position could be granted only upon fulfilment of certain conditions and not otherwise.

5. It was admitted that Shri S. J. Joshi was offered the post of cleaner by letter dated 25th January, 1983. But the said offer was subject to his being found medically fit. Shri S. J. Joshi was not found medically fit and therefore there was no occasion to employ him on any of the post. It has been pleaded that it was on humanitarian grounds that he was continued as a casual loader inspite of being found medically unfit. It was denied that his services were terminated on 16th July, 1985 as alleged.

6. Likewise, as regards Shri S. B. Gandmale it was pleaded that Shri Gandmale was employed as a casual labour like Mr. S. J. Joshi. It was admitted that he was offered the post of loader on probation in the Commercial Department subject to medical fitness by Corporation's Medical Officer. It was denied that KEM hospital had declared Shri Gandmale fit to work as Loader. It was submitted that Management was unable to consider his candidature for the post of Loader as he could not get through the medical test for a suitable employment in the Corporation. As in the case of Shri Joshi, it was pleaded that the workman was a casual labour and the employment was not of a permanent nature. It was denied that the services of two workmen had been terminated as alleged. It was denied that provisions of Sections 25F, 25G or 25H had been violated.

7. Workmen in support of their claim filed affidavits of S/ Shri S. B. Gandmale and S. J. Joshi, both of them were cross-examined on behalf of the Air India management. On behalf of the management no affidavit was filed on merits of the case though affidavit of one Shri R. B. S. Kunde Personnel Officer was filed with regard to production of certain documents. Both the sides have produced documentary evidence in support of their respective cases.

8. I have heard the learned counsel on both the sides at great length and perused the record. At the outset, I may mention that right to be made permanent or right to be appointed on a regular basis is quite different from right not to be retrenched except in accordance with law. Factually and conceptually the two belong to different categories and call for different approaches. Reference may be made in this

connection to 1978—II—LLJ—487 K. Venkatch Vs. Government of India etc. In the present case, the pleadings and evidence do touch in details the issue of non absorption of the two workmen on a regular basis due to purported medical unsuitability but this question is beyond the scope of dispute, referred to this Tribunal, which is confined to legality and justifiability of the terminations of employment of the two workmen. Hence, I am not touching at all the question of non-absorption of the two workmen on a regular basis and would confine myself to the legality and justifiability of the terminations of employment of the two workmen.

8A. The management was at great pains to explain that the employment of the two workmen was wholly on a casual basis. They were not employed to do any regular work. Their services came to be utilized only when some of the regular workers absented themselves and exigencies of work required their employment. Assuming but not conceding this fact, the legal position is that in defining the word 'workman' in the Industrial Disputes Act, the legislature has made no distinction between casual workers and regular workers, so far as the applicability of the benevolent provisions of Sec. 25F of the Act are concerned. Even if a casual worker has continuously and uninteruptedly worked under an employer for 240 days or more, within a period of one year preceding the impugned termination, he is entitled to the protective umbrella of the provisions of Sec. 25F of the I.D. Act and his services cannot be determined unless provisions of the said section have been complied with. Reference may be made in this connection to I-LLJ-1971 page 241. The Pilot Pen Co. (India) Private Ltd. Vs. the Presiding Officer, Additional Labour Court, Madras and another, wherein this proposition has been laid down in most categorical manner. I need not repeat the discussion of law made in the said ruling because I am in entire agreement with the aforesaid proposition of law. In H.D. Singh Vs. Reserve Bank of India and others FLR 1985 (51) 494, the workman was a casual worker. He claimed to have worked continuously for more than 240 days including Sundays and Holidays. The workman was retrenched without complying with the provisions of Section 25F of the I.D. Act. The apex Court held the termination to be illegal amounting to retrenchment, and directed reinstatement of the workman with back wages.

9. In FJR-64(1986) 238 Ismail Khan Vs. State of Rajasthan and others, a Learned Single Judge of Rajasthan High Court explained the difference between a casual labour and temporary labour, by saying that a casual labour means a person who has been appointed towards an unanticipated work and for that work only whereas is the work has been anticipated earlier, the person employed thereon would not fall within the description of casual labour but would fall within the definition of the temporary labour. There can be no quarrel with this proposition of law as well.

10. Hence, in the light of this legal position, I shall have to see if the workmen have succeeded in establishing that each one of them continuously worked for more than 240 days in a year preceding the date of termination. Qua the computation of total working days, one point canvassed before me is whether the holidays and Sundays intervening the total period of since could be added to actual days on which the workmen were employed. In my opinion, this question is no longer res integra. Such a proposition was accepted by the apex Court in H. D. Singh (Supra). The Bombay High Court in W.P. No. 3842 of 1990 Shri Sanjay Tukaram Navage Vs. Air India and other decided on 18th August, 1993 inter alia held that where on evidence it is found that the workman was employed as a casual labour on monthly basis the benefit of weekly holidays is required to be given while computing 240 days under Section 25B of the I.D. Act.

11. Hence, it is in this legal background that the cases of the workmen have to be examined. I would first take up the case of workman Shri S. J. Joshi. In the written statement of claim, it has been pleaded that he had worked for a period of one year and seven months till 16th July 1985, when his services were abruptly terminated. In his affidavit, Shri S. J. Joshi has stated that he remained in continuous employment from 7th March 1980 to August 1985. In his oral statement, he has stated that he was getting his wages on 10th of every month by giving a voucher against which he received payment. In cross-examination, he admitted that whenever he did not work for somedays or months wages were deducted.

12. This workman in his evidence has not given the exact date of termination of his employment. In the written state-

ment of claim, he has mentioned 16th July, 1985. But, in the affidavit, he has mentioned that he continued to work as casual labour till August, 1985. It will be reasonable to accept that he served till August 1985 and not merely till July 16th 1985, because the management has filed an attendance sheet showing attendance yearwise and number of days worked monthwise (Ex M-8). Correctness of this attendance yearwise has not been challenged on behalf of the workman, though it has been urged that the management has not produced payment sheets from 7th March, 1980 to July 1985 in spite of application made by workman for production of such sheets and hence an inference should be drawn that had the management produced such sheets, they would not have supported the case of the management. On behalf of the management, it has been urged that affidavit of Ramnath Balkrishna Shenvi Kunde was filed explaining why payment sheets could not be produced and since the affidavit of Shri Kunde has not been challenged by way of cross-examination nor defuted by some evidence, the statement of Shri Kunde should be accepted. No ground for drawing adverse inference, thus, survives in this case.

13. I have considered the rival contentions in depth. Curiously enough, the workman did not state in his written statement of claim or even in his affidavit that he had served for 240 days or more in a calendar year preceding the date of his termination. From the attendance sheet Ex. M-8, the position that emerges is that the workman worked for a period of 120 days in the year 1984, preceding his termination. During the year 1984 (September to December), he served for another $(17 + 19 + 18 + 16)$ 70 days. He, thus worked for a total period of 190 days in a calendar year preceding his termination. The burden squarely lay on the workman to show that he had served for 240 days or more during 12 calendar years months preceding the termination of his service. Reference may be made in this regard to Monal Lal Vs. Management of Bharat Electronics Ltd, 1981 L.I.C. 806 (812—813—814):

"Before a workman can complain of retrenchment being not in consonance with Section 25F, he has to show that he has been in continuous service for not less than one year under that employer who has retrenched him from service. Section 25B is the dictionary clause for the expression continuous service. It reads as under :

"25B (1) a workman shall be said to be in continuous service for a period if he is, for that period in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman ;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months; he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than —

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; &
(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than —

(i) ninety-five days, in the case of a workman employed below ground in a mine; and
(ii) one hundred and twenty days, in any other case.

Explanation :—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which —

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act,

1946, or under this Act or under any other law applicable to the industrial establishment;

- (ii) he has been on leave with full wages earned in previous years;
- (iii) he has been, absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

11. Mr. Markenday contended that clauses (1) and (2) of Section 25B provide for two different contingencies and that none of the clauses is satisfied by the appellant. He contended that sub-section (1) provides for uninterrupted service and sub-section (2) comprehends a case where the workman is not in continuous service. The language employed in sub-sections (1) and (2) does not admit of this dichotomy. Sub-sections (1) and (2) introduce a deeming fiction as to in what circumstances a workman could be said to be in continuous service for the purpose of Chapter VA. Sub-section (1) provides a deeming fiction in that where a workman is in service for a certain period he shall be deemed to be in continuous service for that period even if service is interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lockout or a cessation of work which is not due to any fault on the part of the workman. Situations such as sickness, authorised leave, an accident, a strike not illegal, a lockout or a cessation of work would *ipso facto* interrupt a service. These interruptions have to be ignored to treat the workman in uninterrupted service and such service interrupted on account of the aforementioned causes which would be deemed to be uninterrupted would be continuous service for the period for which the workman has been in service. In industrial employment or for that matter in any service, sickness, authorised leave, an accident, a strike which is not illegal, a lockout, and a cessation of work not due to any fault on the part of the workman, are known hazards and there are bound to be interruptions on that account. Sub-section (1) mandates that interruptions therein indicated are to be ignored meaning thereby that on account of such cessation an interrupted service shall be deemed to be uninterrupted and such uninterrupted service shall for the purpose of Chapter VA be deemed to be continuous service. That is only one part of the fiction.

12. Sub-section (2) incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year or six months, as the case may be, if the workman during the period of 12 calendar months just preceding the date with reference to which calculation is to be made, has actually worked under that employer for not less than 240 days. Sub-section (2) specifically comprehends a situation where a workman is not in continuous service as per the deeming fiction indicated in sub-section (1) for a period of one year or six months. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in clause (a) of sub-section (2). The conditions are that commencing the a/c with reference to which calculation is to be made, in case of retrenchment the date of retrenchment, if in a period of 12 calendar months just preceding such date workman has rendered service for a period of 240 days he shall be deemed to be in continuous service for a period of one year for the purposes of Chapter VA. It is

not necessary for the purposes of sub-section (2)(a) that the workman should be in service for a period of one year if he is in service for a period of one year and if that service is continuous service within the meaning of sub-section (1) his case would be governed by sub-section (1) and his case need not be covered by sub-section (2). Sub-section (2) envisages a situation not governed by sub-section (1). And sub-section (2) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in sub-section (2)(a) it is necessary to determine first the relevant date, i.e. the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in sub-section (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25F. On a pure grammatical construction the contention that even for invoking sub-section (2) of Section 25B the workman must be shown to be in continuous service for a period of one year would render sub-section (2) otiose and socially beneficial legislation would receive a setback by this impermissible assumption. The contention must first be negated on a pure grammatical construction of sub-section (2). And in any event, even if there be any such thing in favour of the construction, it must be negated on the ground that it would render sub-section (2) otiose. The language of sub-section (2) is so clear and unambiguous that the precedent it necessary to justify the interpretation we have placed on it. But as Mr. Markenday referred to some authorities, we will briefly notice them."

14. On behalf of workman, reliance was placed on H. D. Singh (Supra) in support of the proposition that it was a fit case in which adverse inference could be drawn. In that case, the workman had filed his own affidavit to show that he had actually worked for 207 days and 52 Sundays 217 holidays were available to him. The management in spite of such an affidavit did not file relevant documents to relative claim of the workman. In the present case, the workman himself is silent on this crucial aspect of the case and when it is an non-production of documentary evidence can not be a ground to draw adverse inference against the management.

15. In the present case, there is not an iota of evidence that Sundays were paid holidays for the workman. The claimant himself does not make such a claim. On behalf of the workman reliance was placed on an unreported judgement of the Bombay High Court rendered in W.P. No. 3842 of 1990 Sanjay Tukaram Navage Vs. Air India etc. to support its claim that Sundays and other holidays should be added to the days on which the workman actually worked. In that case, the workman had claimed that he had worked for 259 days. Further, in that case, the workman stated that he was being paid on a monthly basis and not on a daily basis. In these circumstances, the Court held that 52 days (Sundays and Saturdays) should have been added to paid out if 240 days had been completed or not. The present case is quite distinguishable because the union has itself filed xerox copies of statements showing the payment made to casual labourers for different months. These sheets show that payment was not on basis of any monthly salary but on basis of hours for which the workmen had actually worked. For example, the workman for month of September 1984 was paid for 176 hours. The sheets have been placed for

subsequent months too and they exhibited payments, though made monthly, not on monthly wage basis but on basis of work done for specified hours. Thus, there is not an iota of evidence to sustain the claim that Sundays and other Holidays were paid Holidays for the workman.

16. Now, I may examine the case of the other workman viz. Shri S. B. Gandmale. Though, he was initially appointed as casual labour, his employment came to be terminated on 25-9-1982 and he was reappointed as Loader in the cargo division on 15th February, 1984 and his services were terminated on 24-1-1986. In his affidavit, he stated that he had worked continuously for a period of more than 240 days. Xerox copies of statement showing the payment of casual employees, referred to earlier have been filed in support of this clause, which go to show that payments were made monthly, but not on basis of monthly wages, but on basis of actual working hours for which work was done. On behalf of the management Ex. M-18 has been filed to show the number of days monthwise. He is shown to have worked for 5 days in July 1986. From February 1985 to December 1985, his total working days come to $121\frac{1}{2} - 16 = 105\frac{1}{2}$. In this case also, this is no evidence that Sundays and other holidays were paid Sundays and /or paid holidays. K. Venkatiah (Supra) is clearly inapplicable because in that case after completion of one year of service the workman had been given all benefits due to a permanent workman. As such Sundays and other holidays could be treated as paid holidays. Moreover, there was not a single break. In present case, the breaks are writ large from February 1985 to January 1986. The case of L. Robert D'Souza (I LLJ—Sc. 1982) is also of no help to the workman. On his own showing, he was reappointed only on 15th February, 1984. At least, it could be said, that this was a case of retrenchment, where workman had failed to establish that he had actually worked for 240 days or more during 12 calendar months preceding the termination. Babul Sharma Vs. University of Aimer H.R.-1990 (60) 265 is also of no help to the two workmen. In that case, the question if the workman had been paid for Sundays and Holidays was left open because there was no pleading and the matter had been raised only during arguments.

17. Kanhaiya Lal Vs. State of Rajasthan 1993 1 CLR 929 lays down that if a workman has worked for 240 days or more during twelve preceding months from termination of his employment, requirements of Section 25F should be followed before terminating his service. There can be no quarrel with this proposition, which is unexceptionable.

18. In the aforesaid promise, I am of the firm view that the two workmen have failed to substantiate their claim that they had served for 240 days or more, during preceding 12 calendar months from the date of their respective terminations of job. When it is so, the management was not required to comply with the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act. I, therefore, do not find any merit in their claim and answer the reference accordingly. They are not entitled to any relief from the employer. Award may be notified to the parties and may also be sent for publication in accordance with law.

R. S. VERMA, Presiding Officer

नई दिल्ली, 28 सितम्बर, 1995

का.पा. 2814—ग्रौवोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गत में, केन्द्रीय सरकार द्वारा उड़ नेचर्जन ग्रैम कमीशन, देहरादून के प्रबंधसंति के संबंध नियोजकों और उनके कर्मकारों के बीच अन्वेषण में निर्दिष्ट ग्रौवोगिक विवाद में, केन्द्रीय सरकार ग्रौवोगिक अधिकारण, कम-श्रम व्यापालग, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-95 को प्राप्त हुआ था।

[मंडा-30012/11/91-ग्राफ.प्रार. (विविध) (कोल-1)]

लज्ज मोहन, ईम्पक ग्राफिकारी

New Delhi, the 28th September, 1995

S.O. 2814.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oil and Natural Gas Commission, Dehradun and their workmen, which was received by the Central Government on 22-9-95.

[No. L-30012/11/91-IR(Mis.)Coal-I]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-
LABOUR COURT
CUM-LABOUR COURT, PANDU NAGAR, KANPUR U.P.
INDUSTRIAL DISPUTE NO. 8 OF 1992

In the matter of dispute

BETWEEN

Mahendra Prakash

A/9/9 ONGC Colony,

Dehradun.

AND

Chairman

Oil & Natural Gas Commission.

Tel Bhawan,

Dehradun.

AWARD

1. Central Government, Ministry of Labour, vide its Notification No. 30012/11/91-IR. Misc. dated 28-1-92 has referred the following dispute for adjudication to this Tribunal :—

Is the action of the management in verbally terminating the services of Sri Mahendra Prakash w.e.f. 8-3-90 legal and justified ? if not to what relief is the workmen entitled ?

2. The concerned workman Mahendra Prakash in his written statement has alleged that he was appointed in Oil and Natural Gas Commission on 1-6-87 as a Labour and continuously worked upto 6-3-90. In this way he has completed much more than 240 days, yet his services were wrongly terminated on 8-3-90 without complying the provision of Industrial Disputes Act. When the workman filed writ petition the management took the plea that the concerned workman was a Contract Labour and not their's. That writ petition was withdrawn and the present referred has been got made.

3. The management has filed a written statement comprising of 77 pages. The substance of which is that the concerned workman is not their employee. Instead he is an employee of Contractor Dharvir Singh.

4. The concerned workman has filed rejoinder in which he has denied the allegations, made in the written statement.

5. The only point which needs consideration is whether the concerned workman is the contract labour or direct employee of opposite party Oil & Natural Gas Commission.

6. In support of his case the concerned workman has filed certified copy of judgment of writ petition on 13-6-88 of 1987 dated 11-10-90 of Hon'ble High Court Allahabad which was in connection given with other employees of the opposite party. There on it was alleged that they were employees of Contractor Dharvir Singh. The Hon'ble High Court has observed that since there was no registration on the part of employees and licence on the name of contractor it cannot be a case of Contract Labour, hence these petitioners were held to be the direct employee of Oil & Natural Gas Commission.

7. On behalf of management my attention has been drawn to the case of Dinesh versus National Fertiliser Limited 1992 (11) ETP 20 in which a contrary view has been taken by the Hon'ble Supreme Court. It was observed that even if there is no compliance of section 7 and section 12 of Con-

tract Labour (Regulation & Abolition) Act, 1970, the worker would not be deemed to be direct employee of principle employer. Because of this judgment of Hon'ble Supreme Court I am not persuaded to follow the judgment of Hon'ble High Court Allahabad which has been quoted above and in view of ruling of Hon'ble Supreme Court, it is held that the concerned workman who has been shown to be the employee of Contractor, Dharvir Singh is not the direct employee of Oil & Natural Gas Commission. In other words there is no relationship of Master and Servant between the Oil & Natural Gas Commission and workman as such question of termination of service by Oil & Natural Gas Commission does not arise.

8. Consequently illegality and justification for termination order dt. 8-3-90 needs no answer. The concerned workman will not be entitled to any relief.

9. Reference is answered accordingly.
Dt. 16-9-95

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 1995

का.आ. 2815—श्रीदीगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबन्धनंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में विविदिष्ट श्रीदीगिक विवाद में, श्रीदीगिक अधिकरण, वडोदरा (गुजरात) के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-9-93 को प्राप्त हुआ था।

[संख्या एन-12012/331/91-आई.आर.बी. 2]
पी.जे. माठकल, डैक्ट अधिकारी

New Delhi, the 28th September, 1995

S.O. 2815.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Vadodara (Guj.) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 28th September 1995.

[No. L-12012/331/91 IR(B-II)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI A. B. MARATHE, INDUSTRIAL TRIBUNAL (CENTRAL) VADODARA

Reference (ITC) No. 2/1992

BETWEEN

Manager,

Central Bank of India,
Pratik Chambers Peera Mitar Road,
Dandia Bazar, Vadodara-390 001. First Party

AND

Nagnbhai Ishwarbhai Solanki,
Ankodia Post : Koyali, Distt. Vadodara
(Gujarat-India). Second Party

Reference u/s 10(a)(d) of the Industrial Disputes Act, 1947.
Shri R. V. Hota—learned advocate for the First Party.
Shri A. K. Palkar—learned advocate for the Second Party.

AWARD

(1) The second party workman was employed as a peon in the Race Course Branch, Vadodara of the Central Bank of India who are first party herein. The first party conducted a domestic inquiry against him alleging that he was instrumental for disappearance of cash of Rs. 5,000 on 12-3-90 from the Bank premises and was also instrumental for disappearance

of cash of Rs. 10,000 on 15-6-90 from the Bank premises and holding him guilty dismissed him from service on 29-4-91.

(2) Therefore, the peon-workman raised an industrial dispute and as the conciliation proceedings failed, the Labour Ministry, Government of India by order No. Rh-12012/331/91-IR (B-2) dated 13-3-92 referred the following issue for adjudication to this Tribunal :—

"Whether the action of the management of the Central Bank of India in terminating the service of Sh. Naginbhai I. Solanki, sub-staff is justified? If not, to what is the workman entitled?"

(3) The workman filed his statement of claim on 2-7-92 at Ex. 5. He pointed out that as a peon in the Bank it was his duty to stitch the bundles of currency notes and that on 15-6-90 while he was performing such duties he was instructed by his officer to go to the Pani Gate Branch of the bank to carry there the cash and accordingly he left the premises of the bank at 1.30 p.m. and returned by 5.30 p.m. On his return he was informed by cashier R. R. Patel that one bundle of 100 currency notes of Rs. 100 each comprising cash of Rs. 10,000 was missing. Thereafter a search started for the missing bundle and watchman P. S. Jadav found out the bundle from rear side of the record room. Thereafter, it is alleged, that the branch manager insisted on the workman peon to make a confession to the effect that the latter had kept hidden the bundle of Rs. 10,000 and if the peon were not to make such a confession the police would be called and, therefore, because of this threat and because of the persuasion by the union people one Shri Bachubhai Patel, the workman-peon made the confession as demanded of him. Then another cashier one G. C. Shah intervened to say that the cash of Rs. 5,000 which was found short on 12-3-90 might have been made to disappear by the same peon, namely, the present workman and, therefore, the first confession referred to above was destroyed and second confession of the workman was recorded to the effect that he himself was responsible for disappearance of bundle of Rs. 10,000 on 15-6-90 and he was also responsible for disappearance of bundle of Rs. 5,000 on 12-3-90.

(4) A charge-sheet was served on the workman on these facts and a domestic inquiry was conducted at the end of which it was concluded that the workman was guilty and he was dismissed from service by order dated 29-4-91. The workman has called in question the fairness and legality of this order dated 29-4-91.

(5) The bank filed their written statement at Ex. 9 on 6-1-91. They admitted that the second party was employed as a peon in their Race Course Branch and that he was entrusted the work of stitching currency notes into bundles. They also admitted that on 15-6-90 the workman did some work of stitching the bundles and then left for Pani Gate Branch to carry there cash and returned by about 5.30 p.m. They also admitted that when in the evening of 15-6-90 an attempt was made, as usual, to tally the cash it was revealed that there was shortage of Rs. 10,000. Therefore, a search was made and another workman one Jadav found out the bundle of Rs. 100 notes from the rear part of the record room. Thereupon it is claimed that the present workman confessed his guilt. On closer inquiry it was also revealed that it was the same workman who was responsible for disappearance of cash of Rs. 5,000 on earlier occasion, namely, on 12-3-90. Thus, according to the Bank, the present workman gave his confession without any threat or inducement being practised on him. It was pleaded that the cashier had to make good the loss of cash of Rs. 5,000 which had occasioned on 12-3-90. It was urged that because of this precedent the present workman was emboldened to cause disappearance of bundle of Rs. 10,000. They insisted that there was justification in linking the incident of 15-6-90 with the incident on 12-3-90. The Bank further maintained that the domestic inquiry conducted against the workman was fair and legal and did not suffer from any vice and since it was a matter of properly maintaining lakhs of rupees for which public have reposed trust in them, they are justified in imposing the sentence of dismissal on the present workman.

(6) To prove their case the Bank along with list Ex. 11 produced as many as 10 documents relating to the inquiry.

(7) On 2-11-93 the workman gave an application Ex. 13 contending that a preliminary issue be framed and decided as to whether the inquiry against him is fair and legal. This Tribunal by order dated 28-3-94 held that it was impossible to decide whether the inquiry was fair and legal by merely reading that papers of inquiry and called upon the Bank to prove by leading evidence that the inquiry is fair and legal.

(8) At the time of final arguments Shri R. V. Hota, the learned advocate for the Bank vehemently argued that it was not proper for this Tribunal to cast the burden on the Bank to prove that the inquiry was fair and legal. He maintained that when the workman approaches the Tribunal for a judgment that the inquiry was not fair and legal, the burden rests on the workman to prove that story and if he does not lead evidence to discharge that burden, the judgment will be against him. This is particularly so in view of the fact that when the Bank closed their evidence after examining the evidence of one Madhusudan D. Vyas Ex. 20 who was the inquiry officer, the workman too has given a pursis Ex. 26 declaring that he does not want to lead any evidence. In other words, the workman has not chosen to step into the witness box to say that a false confession was extorted from him. The consequence of this conduct in the submission of Shri Hota is that the verdict must be against the workman. Shri Hota has heavily relied upon a Division Bench judgement of the Bombay High Court reported in 1994 F.L.R. P. 1028 (Narang Latex and Dispersions Pvt. Ltd. v/s. Mrs. S. V. Suvarna and another) in Letters Patent Appeal No. 49/94. I will consider the significance and effect of this judgment in the latter portion of this award.

(9) I have heard the arguments of Shri R. V. Hota, the learned advocate for the Bank. The learned advocate for the workman has submitted his written arguments at Ex. 27. Thereafter on 14-9-95 the workman has given a pursis Ex. 29 attempting to correct some typographical errors in the written arguments.

(10) Therefore, the following issues arise :—

(i) Whether the workman proves that the domestic inquiry against him is unfair and illegal ?

(ii) What final order ?

My findings on these issues are as under :—

(i) Yes.

(ii) As per order below.

REASONS

Issue No. (i)

(11) The effect of the argument of Shri Hota relying on the aforementioned judgment of the Bombay High Court would be that merely because the workman has not stepped into the witness box to say that a false confession was extorted from him, the verdict should be against the workman. But the matter is not as simple as it sounds. It would be also possible for the workman to discharge this burden from the cross-examination of the inquiry officer. For that purpose the evidence of the inquiry officer must be carefully scrutinise.

(12) As pointed out earlier the Bank had already produced along with the list Ex. 11 ten documents together with the written statement. Thereafter on 28-11-94 they brought on record two more documents along with the list Ex. 23. Then on 5-12-94 they brought on record the entire record of the inquiry along with the list Ex. 24. This contains some of the documents which were not there in the earlier set of documents produced along with Ex. 11.

(13) Now, the important evidence is the evidence of the Inquiry Officer Shri Vyas at Ex. 20. He is now a retired man of 61 years and this is the only domestic inquiry conducted by him in the life-time. He has described in detail in the chief-examination the steps taken by him

in the course of the inquiry. The witnesses examined on behalf of the Bank during the inquiry are :

(1) P. S. Jadav—the watchman who found out the bundle of currency notes of Rs. 10,000 from rear part of the record room at the fagend of the day, namely, 15-6-90. The second witness is G. C. Shah who was cashier on 12-3-90. The third witness is the Branch Manager Shri Aibara. The workman also examined one defence witness, namely, V. M. Vankar. The report of the Inquiry Officer is at Ex. 24/11. It is a short report of three pages and a careful perusal thereof would show that it is purely based on the confession of the workman. This confession is recorded by the Branch Manager who is a person in authority vis-a-vis the workman. Therefore, how such a confession should be evaluated can be known by reading Section 24 of the Evidence Act. Section 24 enjoins upon the Court duly not to act upon a confession if it appears to be result of threat, inducement or promise. In other words, confession can be acted upon only if the Court is satisfied that it is voluntary and true. The Inquiry Officer has not assigned any reason in his report for believing that the confession is voluntary and true. To test whether the confession is true it is necessary to compare it with the statement prepared by the cashier at the material time a copy whereof is at Ex. 24/4. It is clear from this statement that when the day opened on 15-6-90 the cash with the cashier was Rs. 10,03,517-67 P. At the close of the day the cash was Rs. 3,20,511-55 P. At the bottom of this statement the cashier first wrote the figure in words "Rupees Three lacs twenty thousand five hundred eleven and paise fifty five only." Then it is corrected to read as "Rupees Three lacs ten thousand five hundred eleven and paise fifty five only". Therefore, it is important to find out who, why and in what circumstances made this correction to read as "ten thousand" instead of "twenty thousand". All other corrections in the statement veer round this single correction of Rs. 10,000. For this purpose the Inquiry Officer ought to have recorded the evidence of the cashier R. R. Patel. But the Inquiry Officer in para (10) of the cross-examination has evasively said that he did not examine R. R. Patel because his evidence was not offered by the presenting officer. He has also said, rather irresponsibly, that he did not feel that the truth would come out if the evidence of R. R. Patel is recorded. It is in fact this R. R. Patel, the then cashier, who could have explained whether at any point of time on 15-6-90 he satisfied himself that the cash of Rs. 3,20,511-55 P. existed. It is admitted fact that the present workman was not in the Bank premises from 1.30 p.m. to 5.30 p.m. Therefore, if according to R. R. Patel actual cash of Rs. 3,20,511-55 P. actually existed any time from 1.30 p.m. to 5.30 p.m. then for the disappearance of Rs. 10,000 the present workman cannot be blamed. But the evidence of R. R. Patel is not recorded during the domestic inquiry. That is a material lacuna and, therefore, I conclude that the inquiry against the workman is vitiated. It is unfair and illegal. Even the Bank could have examined R. R. Patel—the cashier in the Court. This is so because they were given hint from the cross-examination of Inquiry Officer that non-examination of R. R. Patel can prejudicially affected the merits of their case. Even then the Bank has declared by pursis Ex. 25 that they do not want to lead any more evidence. That clinches the issue. Thus, from the cross-examination of the Inquiry Officer alone the workman has successfully proved that the inquiry against him is vitiated. I, therefore, hold issue No. (i) in the affirmative.

Issue No. (ii)

(14) The Bank has not led any evidence about the painful employment of the workman from the time of his dismissal till today. Therefore, as the Bank has totally failed to establish the guilt of the workman, the workman is entitled to be re-instated in service

with full back wages. I, therefore, pass the following order :—

ORDER

The order dated 29-4-1991 passed by the first party dismissing the second party workman from service is hereby set aside. The first party Bank is hereby ordered to re-instate second party workman in service with continuity of service and pay him arrears of wages from the date of dismissal till the date of reinstatement together with cost of Rs. 500 (Rupees Five hundred only) within three months from the date of publication of this award.

Dated, 18th September, 1995.

A. B. MARATHE, Industrial Tribunal

नई दिल्ली, 29 सितम्बर 1995

का.आ. 2816—श्रीशोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एक सी आई के प्रबन्धनतंत्र के संबंध नियोजकों और उनके धर्मेकारों के बीच, अनुबंध में निर्दिष्ट श्रीशोगिक विवाद में श्रीशोगिक अधिकारण, चंडीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-95 को प्राप्त हुआ था।

[म.ए.ल.-22012/41/पफ/94-आई आर (सी-II)]
राजा लाल, डेस्क अधिकारी

New Delhi, the 29th September, 1995

S.O. 2816.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the management of F.C.I. and their workmen, which was received by the Central Government on the 25-9-95.

[No. L-22012/41/F/94-IR(C-II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE SHRI S.R. BANSAL, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, CANDIGARH

Case No. I.D. 121/94

BALDEV SINGH VS. FOOD CORPORATION OF INDIA

For the workman.—Workman in person.

For the management :—Shri Gian Chand.

AWARD

Dated : 19.9.95.

In the wake of Industrial Dispute raised by the workman Baldev Singh, Central Govt. exercising the powers U/s. 10(1) (d) of the Industrial Disputes Act 1947, (for short called as Act) has referred the following dispute vide No. L-22012/41/94-IR, CII dated 15-9-94 for adjudication to this Tribunal :—

“Whether the action of the management of Food Corporation of India, Ludhiana, in terminating the services of Shri Baldev Singh is justified. If not, to what relief is the workman entitled to?”

On receipt of reference, notices were issued to the workman as well as to the management. Workman appeared and made statement that the management has taken him back on duty and therefore, he does not want to proceed with

the reference. He closed his evidence. In view of the statement made by the workman, the reference shall stand answered accordingly against him. Appropriate Government be informed.

Chandigarh.

19.9.95.

S. R. BANSAL, Presiding Officer

नई दिल्ली, 29 सितम्बर, 1995

का.आ. 2817—श्रीशोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल. के प्रबन्धनतंत्र के संबंध नियोजकों और उनके कर्मेकारों के बीच, अनुबंध में निर्दिष्ट श्रीशोगिक विवाद में श्रीशोगिक अधिकारण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-95 को प्राप्त हुआ।

[सं.ए.ल.-22012/238/94 आई आर (सी-II)]
राजा लाल, डेस्क अधिकारी

New Delhi, the 29th September, 1995

S.O. 2817.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.S. Ltd. and their workmen which was received by the Central Government on the 25-9-95.

[No. L-22012/238/94-IR (C-II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.
Dated : 20th day of July, 1995

INDUSTRIAL DISPUTE NO. 84 OF 1994
BETWEEN

The Vice President, S.C. Mines Labour Union (INTUC)
Srirampur, Adilabad Dist. . . . PETITIONER

AND

The General Manager, S.C. Co. Ltd., Srirampur, Adilabad Dist. . . . RESPONDENT

APPEARANCES :

Sri William Burra, Advocate for the Respondent.
None for the Petitioner.

AWARD

This is a reference made by Government of India, Ministry of Labour, New Delhi by its Order No. L-22012(238)94-IR, C.II, dt. 7-10-1994 for adjudication of the dispute mentioned in the schedule which reads as follows :—

“Whether the action of the management of SCCL in not accepting the request of the workmen (Sh. Ch. Guruwaiah and K. Rayamallu) for postponement of their date of promotion is just and fair? If not, to what relief are the workmen entitled to?”

The said reference has been registered as Industrial Dispute No. 84 of 1994 on the file of this Tribunal.

2. After receiving the notice, the Petitioner did not appear before this Tribunal on 7-12-1994, 21-12-1994 and on 16-1-1995 the petitioner did not file claim statement and the petitioner was set *ex parte*. The Respondent filed counter on 19-4-1995. On 20-7-1995 the Petitioner remained *ex parte* and the Respondent has no evidence. As the Petitioner failed

to submit his claim statement, there are no triable issues. Hence the reference is closed.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 20th day of July, 1995.

A. HANUMANTHU, Industrial Tribunal-I
Appendix of Evidence
NIL

नई दिल्ली, 29 सितम्बर, 1995

का.आ. 2818.—श्रीद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल के प्रबन्धसंघ के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रीद्योगिक विवाद में श्रीद्योगिक अधिकारण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-95 को प्राप्त हुआ था।

[सं. एल.-22012/251/94-आई.आर. (सी-II)]
राजा लाल, डैस्क अधिकारी

New Delhi, the 29th September, 1995

S.O. 2818.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on the 25-9-95.

[No. L-22012/251/94-IR(C-II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.

Dated : 24th day of July, 1995

INDUSTRIAL DISPUTE NO. 57 OF 1995 BETWEEN

The Secretary, Godavari Loya Boggu Gam Karmika Sangh (IFTU) Godavarikhani, Dist. Karimnagar.
.. PETITIONER.

AND

The General Manager, Singareni Collieries Company Limited, Srikakulam, Dist. Adilabad.
.. RESPONDENT.

APPEARANCES :

None for both parties.

AWARD

This is a reference made by the Government of India, Ministry of Labour, New Delhi, by its Order No. L-22012/251/94-IR(C-II), dt. 26-5-1995 for adjudication of the dispute mentioned in the schedule which reads as follows :

"Whether the action of the Management of S.C.C. Ltd., Srikakulam in suspending of Shri K. Devaiah, Pump Operator from 13-5-1993 to 22-5-93 and not paying wages for this period was legal and justified? If not, what relief the workman is entitled to?"

The said reference has been registered as Industrial Dispute No. 57 of 1995 on the file of this Tribunal.

2. After receiving their notices issued by this Tribunal both the petitioner and the Respondent called absent though notices served on them. As the parties are not interested in the matter hence the reference is closed.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 24th day of July, 1995.

A. HANUMANTHU, Industrial Tribunal-I
Appendix of Evidence
NIL

नई दिल्ली, 29 सितम्बर, 1995

का.आ. 2819.—श्रीद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसेज नकोदाय प्रक्रम-र्विवरण सर्विसेज, श्री.एन. जी.सी. ने जैमनपुर खेत में टेकोवार के प्रबन्धसंघ के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रीद्योगिक विवाद में श्रीद्योगिक अधिकारण, जोधपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-95 को प्राप्त हुआ था।

[सं. एल- 30012/28/91-आई.आर. (विवर) को.वा. I]
ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 29th September, 1995

S.O. 2819.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jodhpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Navodaya Ex-servicemen Services, Contractors for ONGC in Jaisalmer Project and their workmen which was received by the Central Government on 25-9-95.

[No. L-30012/28/91-IR(Misc.)(Coal-I)]

BRAJ MOHAN, Desk Officer

ब्रज मोहन, जोधपुर

पीठासीन अधिकारी.— श्री महेन्द्र कुमार जैत, आर. एच. जे. एस. केन्द्रीय श्रीद्योगिक विवाद सं. :- 2/1992

श्री तेजसिंह कच्छवाहा पुत्र जी बनासिंह कच्छवाहा आफिसर मैसेज के सामने गेर विलाम लोट नम्बर -7 जिला जोधपुर।

प्रार्थी

वनाम

मैसेज नकोदाय एक्स सर्विसमैन सर्विसेज ए-14 बाड़िया सोसाइटी फतेहगंज बडोदा-390002

अप्रार्थी

उपस्थिति :-

(1) प्रार्थी की ओर से कोई उपस्थित नहीं

(2) अप्रार्थी की ओर से श्री शोतलचन्द उपस्थित अधिनियम

दिनांक 22-8-1995

भारत सरकार के श्रम मंत्रालय द्वारा श्रप्ती अधिसूचना क्रमांक एल-30012/28/91 आई.आर. (मिस.) दिनांक 21-1-1992 के द्वारा निम्न विवाद बास्ते अधिनियम इस व्यापालय को प्रेषित किया है।

"Whether the action of the management of M/s. Navodaya Ex-Servicemen Services, Contractors for ONGC in their Jaisalmer Project in terminating the services of Shri Tej Singh Kachohawas Wireless Operator w.e.f. 1-12-90 is just and legal. If not to what relief is the workmen entitled?"

2. प्रार्थी अधिक ने दिनांक 15-6-1994 को इस प्रकरण में उपस्थित होकर मांग पत्र प्रस्तुत करने हेतु अवसर चाहा इस पर प्रकरण में 25-8-1994 मांग पत्र पेश करने हेतु तारीख पेशी नियन की गई लेकिन प्रार्थी ने 25-8-1994 व उसके तश्चात नियन तारीख पेशी 10-11-94, 11-1-95, 15-4-95, 16-5-95 व आज मांग पत्र पेश नहीं किया है। यही नहीं दिनांक 10-11-94, 11-1-95 15-4-95, 16-5-95 व आज प्रार्थी स्लम या उसके प्रतिनिधि भी उपस्थित नहीं आये। उक्त तथ्यों से यह जाहिर होता है कि प्रार्थी इस प्रकरण को आगे चलाने का इच्छुक नहीं है। अतः समस्त तथ्यों को देखते हुए इस प्रकरण में नोडिस्प्यूट एवार्ड पारित किया जाना न्यायोचित प्रतीत होता है।

अधिनिर्णय

3. प्रार्थी व उसके प्रतिनिधि के लगातार कई पेशीयों पर उपस्थित नहीं होने व वांगे पत्र प्रस्तुत नहीं करने में यही प्रकट होता है कि अधिक इस प्रकरण को आगे चलाने में रुचि नहीं रखता है। अतः इस प्रकरण में कोई विवाद नहीं अधिनिर्णय (नोडिस्प्यूट एवार्ड) पारित किया जाता है।

4. इस अधिनियम को वास्ते सूचना एवं प्रकाशनार्थ भारत सरकार के थ्रम मंत्रालय को प्रेषित किया जाये। व

5. यह अधिनिर्णय आज दिनांक 22-8-1995 को खूब न्यायालय में हस्ताक्षर कर सुनाया गया।

महेन्द्र कुमार जैन, न्यायाधीश

नई दिल्ली, 29 सितम्बर, 1995

का.प्रा. 2820.—आईओगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल के प्रबन्धतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आईओगिक विवाद में केन्द्रीय सरकार आईओगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-9-95 को प्राप्त हुआ था।

[सं. एल.-22012/538/94 आईओगिक (सी-II)]
राजा लाल, डेस्क अधिकारी

New Delhi, the 29th September, 1995

S.O. 2820.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on the 28-9-95.

[No. L-22012/538/94-IR C-II]
RAJA LAL, Desk Officer

ANNEXURE BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.
Dated : 28th day of August, 1995

INDUSTRIAL DISPUTE NO. 48 QF 1995

BETWEEN

Vice President, S.C. Coal Mines Labour Union, Sriram-pur Colony (Post) Adilabad Dist. PETITIONER

AND

The Director (P. A.&W),

M/s. Singareni Collieries Company Limited,
Kothagudem Colliery, Kothagudem (PO),
Khammam District. RESPONDENT

APPEARANCES :

Sri K. Srinivasa Murthy & Miss G. Sudha, Advocate for the Respondent.

None—for the Petitioner.

AWARD

This is a reference made by the Government of India, Ministry of Labour, New Delhi by its Order No. L-22012 (538)94-IR.C.II, dt. 2-3-1995 under Section 10(1)(d) & (2A) of the Industrial Disputes Act, 1947 for adjudication of the Industrial Dispute annexed in the schedule which reads as follows :

"Whether the action of the management in fixing Sri P. Rajeshwar Rao's pay at Rs. 572.00 and his junior Sri A. Poshalu's basic pay at Rs. 601.00 per month w.e.f. 8-4-1981 is justified ? If not to what relief Sri Rao is entitled to?"

This said reference has been registered as Industrial Dispute No. 48 of 1995 on the file of this Tribunal.

2. Notices were served on both the parties. On 17-7-1995 the Petitioner was called absent and set ex parte. On 28-8-1995 the Counsel for the Respondent submitted that as the Petitioner remained ex parte, the Respondent is not filing any counter. Hence there are no triable issues. Therefore, the reference is closed.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 2nd day of August, 1995.

A. HANUMANTHU, Industrial Tribunal-I
Appendix of Evidence

NIL

नई दिल्ली, 29 सितम्बर, 1995

का.प्रा. 2821.—आईओगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल के प्रबन्धतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आईओगिक विवाद में केन्द्रीय सरकार आईओगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-95 को प्राप्त हुआ था।

[सं. एल.-22012/90/93-आई आर (सी-II)]
राजा लाल, डेस्क अधिकारी

New Delhi, the 29th September, 1995

S.O. 2821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on 25-9-1995.

[No. L-22012/90/93-IR (C-II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.
Dated, 19th day of August, 1995
Industrial Dispute No. 23 of 1993

BETWEEN

The President S.C.M.K. Sangh (BMS)
Qtr. No. A/D-68 Ramakrishnapur-504301.
Dist. Adilabad. . . Petitioner

AND

The General Manager (Personnel),
M/s. S.C. Co. Ltd., P.O. Kothagudem,
507 101 Badrachalam Road Station
SC (Rly) Dist. Khammam. . . Respondent

APPEARANCES :

M/s. G. Bikshapathy, G. Vidya Sagar, N. Vinesh Raj
and G. Ravi Mohan, Advocates—for the Petitioner.
M/s. K. Srinivasa Murthy, G. Sudha, Advocates—for
the Respondent.

AWARD

This is a reference made by the Government of India, Ministry of Labour, by its Order No. L-22012/90/93-IR (C-II), dated 17-6-1993 under Section 10(1)(d) and (2-A) of the Industrial Disputes Act, 1947 for adjudication of the dispute mentioned in the schedule which reads as follows :

"Whether the lockout declared by the management of M/s. S.C.C. Ltd., Srirampur, Ramakrishnapur, Mandamarri and Bellampalli, Dist. Adilabad, A.P. from 2nd shift of 24-10-91 to 3rd shift of 26-10-91 as a sequel to mass Casual leave by the Executives is legal and justified ? If not, to what relief the workmen affected by the said lock-out are entitled to ?"

The said reference has been registered as Industrial Dispute No. 23 of 1993 on the file of this Tribunal. After receiving the notices issued by this Tribunal, both parties put in their appearance and they are being defended by legal practitioners.

2. The material averments in the claim statement filed on behalf of the Petitioner are as follows :

The Petitioner Union is a registered Trade Union having been registered under the Trade Unions Act. Majority of the employees of the Singareni Collieries Company Limited, are members of the Union. The Respondent-Management on 24-10-1991 has declared illegal lockout on the ground that the executive officers working in Srirampur, Ramakrishnapur, Mandamarri and Bellampalli Areas have gone on mass casual leave. The said lockout is illegal and arbitrary. The executives of the Respondent are not workmen as defined under Industrial Disputes Act. Inspite of the lockout the workmen have reported for duty but they were not allowed to perform their normal duties w.e.f. 2nd shift on 24-10-1991 and it was lifted only on 26-10-1991. The lockout declared by the Respondent is contrary to the provisions of Sections 22 and 23 of the I.D. Act. The reasons stated by the Respondent that there was law and order problem due to assault on M. Vasant Kumar, Colliery Manager, R.K. 5 Incline and on account of it lockout was declared cannot be accepted. The Management cannot declared lockout without following the procedure laid down in Section 22 of the I.D. Act. No notice was given before declaring lockout. There was no strike in the Company by any of the workmen. Only to deprive of the workmen of their legitimate wages, the Respondent resorted to declare the illegal lockout. The Management should have made alternative arrangement if the officers have applied for leave and not attended to duty. No such arrange-

ments were made by the Management. The lockout was declared only for workmen whereas the officers and executives were exempted from it. Thus the workmen were discriminated in depriving their wages from 24th to 26th October, 1991. The executives and officers have not attended to duties and the management failed to persuade them. It cannot be a ground for depriving 30 thousand workmen of their legitimate wage for no fault of theirs. The allegations that the staff refused to accept the responsibility to run the mine is false. The lockout has been declared without the provocation of the workmen. No action was initiated against the officers as have refused to perform their duties. The Management, instead of taking action against the erring officials, have resorted to illegal lockout depriving workmen of their salary. The Union had raised industrial dispute before the Assistant Labour Commissioner (Central), Mancherial by its letter dated 10-11-1991. The conciliation meeting ended in failure and the Assistant Labour Commissioner through its letter dated 7-9-1992 sent his failure report to Government of India and it culminated in the present reference to this Tribunal. The Petitioner-Union prays to declare the action of the Respondent-Company in declaring the lockout from second shift of 24-10-1991 to third shift of 26-10-1991 as wholly illegal and unjust and direct the Respondent to pay the salary to the affected workmen for the above said period.

3. On behalf of the Respondent Management a counter has been filed to the following effect :—

The Respondent-Company is a public sector undertaking owned by the Central Government and the State Government, set up for extraction and sale of coal. It has a large number of mines for which they engaged over 1.10 lakh workers. All the workers are covered under the Mines Act and the terms and conditions of service are determined by various long term settlement entered into between the Management of Coal Industry on one hand and the Federation of Unions on the other. Sri M. Vasant Kumar was working as Colliery Manager of R. K. No. 5 Incline. While he was carrying on his function as Colliery Manager in broad day light certain persons came in a jeep and stabbed him with axes on the face and other parts of the body and thus caused grievous wounds. After initial treatment he was shifted to Nizam's Institute of Medical Sciences, Hyderabad and he was kept in Intensive Care Unit for about one month. On account of this incident a fear was created in the minds of the officers. No one was dare to come near the mines. But to the absence of all the officers, the workmen had to be locked out. Without the officers possessing qualifications under the Coal Mines Regulations, mining work cannot be taken out. All the officers abstained from work after applying for leave due to fear of assault, death and threats to their lives. Hence the Management had no alternative but to close the mine and they had to declare lockout. Even if the Management had attempted to work the mines, they would have been liable for prosecution under the Mines Act. The Management in view of the peculiar situation, had authorised the Supervisory staff who possess the requisite qualifications under the Coal Mines Regulations, to work as Manager and carry on the functions as provided for in the Coal Mines Regulations but they have refused to work. Hence the Management had no other alternative but to lockout the Mine. The Supervisory Staff who had refused even to accept the authorisation belong to the category of workman. There would have been sabotage in the operation of the Mines also. In those circumstances, the Management cannot be blamed for taking steps for protecting the mine and locking out the Mine to prevent the mine and personnel. All the recognised Trade Unions knowing the situation did not raise any demand for payment of wages for the relevant period of lockout. Only the Petitioner Union which is a minority union, has raised this demand probably to gain

popularity over the other Unions. The Petitioner Union does not have a representative character in the Area. Its membership is insignificant. The dispute by an insignificant or minority union cannot be treated as Industrial Dispute and the same should be rejected on this ground alone. The allegation that the management did not make any alternative arrangement, is incorrect. The Management requested the Supervisory Staff who had the Mining Qualifications to run the Mine. But they refused to do so. The situation was so grave in nature that every one was looking out for their own safety and they are not bothered about the mines or others. The lockout as declared is justified in view of the peculiar circumstances. Hence the reference may be closed and the petitioner Union is not entitled for any relief.

4. On behalf of the Petitioner-Union WW-1 is examined and Ex. W-1 is marked. P. Raja Reddy working as General Secretary of the Petitioner-Union is examined as WW-1 and he deposed to the averments in the claim statement. Ex. W-1 is the copy of the representation made by the Petitioner Union to the Conciliation Officer. On behalf of the Respondent-Management MWs-1, 2 and 3 are examined and Exs. M-1 to M-103 are marked. MW-1 M. Vasant Kumar is now working as Superintendent of Mines. He deposed that previously he worked as Colliery Manager of R.K. 5 Incline during 1991, that on 24-10-1991 at about 12.00 noon while he was checking stock register in Pit Stores, about four unknown persons entered the Pit Stores from the back door and attacked him with axes and he sustained cut injuries all over his body, that he was given first aid treatment and thereafter he was shifted to Nizam's Institute of Medical Sciences, Hyderabad, that he received 29 cut injuries, that he took treatment as inpatient for one month and thereafter as outpatient for another two months. MW-2 is B. Bhana Prasad who is the Deputy Personal Manager working in the Respondent-Company. MW-3 is Under Manager working in the Respondent-Company. They deposed to the averments in the counter filed on behalf of the Respondent-Management. The details of the documents Ex. W-1 and Exs. M-1 to 103 are appended to this Award.

5. The points that arise for consideration are as follows :

- (1) Whether the lockout declared by the Respondent-Management of M/s. Singareni Collieries Co. Ltd., of Srirampur, Ramakrishnapur, Mandamarri and Bellampalli Areas from second shift of 24-10-1991 to third shift of 26-10-1991 is legal and justified ?
- (2) To what relief the affected workmen on account of such lockout are entitled to ?

6. Point (1)—The admitted facts, as revealed from the evidence on record, are as follows :—

The Singareni Collieries Company Limited, Kothagudem, Khammam District is a public sector undertaking set up for extraction and sale of coal. There are 70 Mines under its control spread over to four districts i.e. Karimnagar, Adilabad, Warangal and Khammam. About 1.15 lakhs workmen, both skilled and unskilled, are being engaged in all the said Mines. The Petitioner Union is one of the Unions of the workers registered under the Trade Union Act. During October 1991 Sri M. Vasant Kumar (MW-1) was working as Colliery Manager incharge of R.K. 5 Incline. On 24-10-1991 MW-1 attended to his duty at 7.00 a.m. After completing his mine work, he went to Stores at 12.00 noon and while he was checking the stock registers, four unidentified persons entered the Stores from back side and attacked Sri Vasant Kumar with axes and knives and he received 29 cut injuries. After first aid treatment he was shifted to Nizam's Institute of Medical Sciences, Hyderabad where he was admitted as inpatient for one month and later on he took treatment as outpatient for another two months. In that connection a case in Crime No. 60/91 of Srirampur Police Station was registered and Ex. W4 is the xerox copy of First Information Report in that crime. On account of that

incident, the executives and officers of Srirampur, Mandamarri, Ramakrishnapur and Bellampalli Areas abstained from duties by sending mass casual leave. As there were none to attend to the duties of the said officers, the Management declared lockout from second shift on 24-10-1991 to third shift of 26-10-1991. The workmen were not allowed to work during the said period of lockout. The workmen are now claiming wages for the said lockout period alleging that the lockout declared by the management is illegal and arbitrary.

7. It is contended by the learned counsel for the Petitioner Union that the lockout declared by the management is illegal and not justified as the provisions under Sections 22 and 23 of the I.D. Act are not complied with, that the officers who went on casual leave and who refused to attend to duties are not 'workman' as defined under I.D. Act, that the management should not deprive the workmen the wages for the lockout period for the dereliction of duty on the part of the officers and that no action was initiated against the officers who went on mass casual leave and who refused to perform their duties and that the management instead of taking action against the erring officers, has resorted to illegal lockout, thus depriving the workmen of their legitimate wages and therefore, the workmen affected by the illegal lockout are entitled for wages.

8. The learned counsel for the Respondent-Management submits that due to criminal assault on the colliery manager Sri Vasant Kumar in the broad day light created a terror in the minds of the officers, that the officers did not dare to come near the mines and so they went on mass casual leave, that the Management authorised the Supervisory staff who had necessary qualifications under Coal Mines Regulations to undertake the mining operations but they refused to work and therefore the management had no option but to declare lockout in the interest and safety of the mine and the personnel. It is further contended by the learned counsel for the Respondent-Management that the Management would have risked prosecution for undertaking the operations of the Mines without the qualified officers and therefore under the peculiar circumstances the lockout had been declared and it is just and legal.

9. It is not disputed that the Respondent-Management declared lockout in the Mines situated in the areas of Srirampur, Ramakrishnapur, Mandamarri and Bellampalli in Adilabad District from the second shift of 24-10-1991 to third shift of 26-10-1991 as a sequel to mass casual leave of executives and officers. Section 2(1) of the I.D. Act defines a 'lockout' as meaning closing of a place of employment or suspension of work or refusal by an employer to continue to employ any number of persons employed by him. General restrictions on strikes and lockout are to be found in Sections 22 and 23 of the I.D. Act. The provisions of Section 22 and 23 cumulatively apply to public utility services while the provisions of Section 23, apply to both the public utility and non-public utility services. Section 24 of the Act lays down the circumstances under which strikes and lockouts shall be illegal and under which they shall not be deemed to be illegal. The effect of combine reading of Sections 22 and 23 is that the lockout will be illegal if—

1. the concern is a public utility concern and
2. (1) notice required by S. 22(1) has not been given; or
- (2) it has been declared during the period of operation of settlement or award in respect of matters covered by that settlement or award; or
- (3) it has been declared:
 - (i) during the pendency of conciliation proceedings before
 - (a) a conciliation officer, or
 - (b) a Board, or
 - (ii) within 7 days from the conclusion of such proceedings; or
- (4) it has been declared during the pendency of
 - (i) adjudication proceedings before a Labour Court, Industrial Tribunal or National Tribunal; or
 - (ii) within two months after the conclusion of such proceedings or

- (iii) during the pendency of arbitration proceedings before an "Arbitrator" or
- (iv) within two months after the conclusion of such proceedings where a notification under sub-section (3-A) of S. 10-A has been issued.

In the instant case, it is not disputed that lockout has been declared by the Management without giving notice of lockout as contemplated under Section 22(2) of the I.D. Act. Therefore under Section 24(i) of the I.D. Act. The said lockout has to be declared as illegal as it has been declared in contravention of Section 22 of the I.D. Act. The learned counsel for the Respondent submits that in the peculiar circumstances prevailing at that time, there was every justification for the Management in declaring lockout. There is much force in this contention. Admittedly there was deterioration of law and order and security at that time. M.W1 M. Vasant Kumar worked as Colliery Manager during October, 1991. With regard to the law and order problem M.W1 deposed in his evidence thus : Ramakrishnapur area is declared as disturbed area by Government of Andhra Pradesh because of anti-social elements and it is naxalite infested area. During 1989-91 extremist activities were in full swing. In the middle of May, 1990 at about 4 P.M. on Monday some unknown persons entered into mine premises and burnt the company jeep and some of our senior officers were kidnapped at that time. The kidnappers used to submit their demands like demanding release of criminals who are in police custody or jail. In open Cast mine also some unknown persons burnt heavy equipment like Dumpers and Dozers. In the middle of May 1990 the situation in the mine was very tense. We were afraid of our safety and also the safety of our family members. I went there to eke out my livelihood there. On 24-10-1991 I attended to the duty at 7.00 A.M. At about 12 noon I was checking the stock register in Pit Stores. In Pit store one mazdoor was issuing material to the workmen at that time. I sat in the clerk seat in the Pit Stores and checking some records. At that time about 4 unknown persons entered the pit stores from the back side door and attacked me with axes. I sustained cut injuries on all over my body. The culprits left the stores after I fell down, my peon took me to the Sir-gareni Area Hospital at Ramakrishnapuram. I was given first aid treatment. Thereafter I was shifted to Nizam's Institute of Medical Sciences, Hyderabad. I received 29 cut injuries and I took treatment as inpatient for one month. Thereafter as Out patient for 2 months." M.W1 further stated in his examination chief thus : "One L.K. Das the senior officer of the Respondent-Company was murdered in 1989 at Ramagundam. In 1990 two officers whose names I do not remember belonging to the Respondent-Company were also attacked in Mandamarri area. In February 1992 one K. Lakshminarayana. Additional Chief Mine Engineer was killed." Ex. M2 is the xerox copy of the letter dt. 24-10-1991 addressed by the Medical Officer, Ramakrishnapuram to the Director, Nizam's Institute of Medical Sciences, Hyderabad to admit M.W1 in the hospital. Ex. M3 is the xerox copy of the discharge record issued by the Nizam's Institute of Medical Sciences, Hyderabad relating to M.W1. M.W2 working as Deputy Personnel Manager deposed on this aspect thus : "I am working in Ramakrishnapur Area at the time Mr. Vasant Kumar was assaulted on 24th October, 1991 who was the Manager of R.K. 5 Incline. All the officers who were working in that area were under constant intimidation, threat and pressure because of the extremist activities. These extremist activities were within the mine as there were some militant workmen. There were kidnappings assaults and negotiations at gun point of the Executives. All the demands of the extremists were conceded because of the threats. I was given a threat that unless I regularise badlies and casualties, I will not be allowed to live." M.W2 further stated thus : "At Godavarikhani one Union leader by name Bhaskara Rao was killed on 1-7-1991. It was A.I.T.U.C. Union (All India Trade Union Congress) the Union leader that was killed at that time. M.W2 also deposed that after the criminal assault of M.W1 on 24-10-1991 the meeting of all officers took place at 3.00 p.m. and that all the officers expressed their fear to attend to their duties. M.W3 Y. Anjaneyulu working as Under Manager deposed with regard to the law and order situation that "Prior to 24-10-1991 one of the Mine Managers was beaten in the Mine. Prior to that one leader was killed. The Mine Manager Vasant Kumar was beaten at R.K. 5 Incline before whom I was working at R.K. 1 Incline . . . In all the Mines work could not take place because of panic and we asked Overman to take charge of the Mine but they refused to take charge."

10. It is clear from this testimony of M.W1 to M.W3 that Bellampally, Ramakrishnapur, Mandamarri Srilampur and Godavarikhani areas have been declared as disturbed areas, that there was no security and safety of the officers working in the Mines in those areas, and the officers used to get threats and they were being attacked. A Senior Officer of the Godavari Khani was murdered in 1987 in Ramagundam and in 1992 Officers were attacked in Manuguru and Additional Chief Mining Engineer at Srilampur areas was also killed by the workmen. Apart from this on 24-10-1991 Sri Vasant Kumar (M.W1) Colliery Manager of RK 5 Incline was brutally attacked while he was discharging his duties at about 12.00 noon, and this caused panic in the minds of all officers and on account of it they had applied for mass casual leave apprehending danger to their lives. The officers abstained from work by applying mass casual leave. It appears to be a spontaneous act on their part in view of the brutal attack on the Colliery Manager Sri Vasant Kumar M.W1. In the absence of the Officers who are statutory authorities under the Mines Regulations, the Management cannot undertake mining operations and therefore, the Management is justified in declaring lockout due to the absence of statutory officers.

11. The learned counsel for the Petitioners submits that the Respondent-Management ought to have made alternative arrangement in the absence of the officers for running the mining operations. It is in the evidence of M.W2 and M.W3 that steps had been taken authorising the Overmen to take up the responsibility of Colliery Managers for running the mining operations and that the Overmen refused to take such authorisation and to operate the Mines. Exs. M16, M17, M18, M21 to M28 are some of the authorisation letters issued to the Overmen to take up the responsibilities of Colliery Manager in the absence of regular Managers and the Overmen refused to take up such responsibilities. As per the Mining Regulations, the mining operations cannot be undertaken in the absence of the statutory staff. In the instant case, in the absence of the Colliery Managers and other officers the Supervisory staff i.e. the Overmen were authorised to take up that responsibility and they refused to do so. Under those circumstances, I have no hesitation to conclude that the Respondent-Management was constrained to declare lockout and therefore there was every justification for declaring lockout under those circumstances.

12. Exs. M6 to M10 and M29 to M78 are the lockout notices. But they are not issued in conformity with the provisions of Section 22(2) of the I.D. Act. Exs. M11 to M14 and M79 to M94 are the notices with regard to the termination of the lockout which was declared on 24-10-1991. Ex. M95 to M101 relate to particulars of the strikes held in May, July and December, 1991. Exs. M102 and M103 are the Overmen reports. Many of these documents are irrelevant for the purpose of this case and they have been dumped in by the Management without any relevancy. The counsel for the Respondent-Management also did not adduce any arguments regarding the relevancy of these documents for deciding the issue provided in this reference. The learned counsel for the Respondent Management relied upon the decision in KAIRBETTA ESTAE. KOTAGIRI v. RAJAMANICKAM AND OTHERS (1960) (II) LLJ page 275 (Supreme Court). The facts in that case are also similar to the facts in this case. In that case the Manager of Kairbetta Estate was assaulted on 26-7-1957 by some of the workmen and he suffered six fractures and had to be in hospital in Coonoor and Madras for over a month. The staff was also threatened by the workmen. As a result of those threats Kelso Division was closed until further notice. Under those circumstances, their Lordships of the Supreme Court held that the lockout was fully justified. In the instant case also M.W1 working as Colliery Manager was brutally attacked and he sustained as many as 29 incised injuries and he took treatment as in patient for more than a month in Nizam's Institute of Medical Sciences, Hyderabad and later on took treatment as out-patient for another two months, and on account of such brutal attack, the officers went on leave and consequently the Respondent-Management declared lockout.

13. In the light of my above discussion, I hold on point (1) that though the declaration of lockout on 24-10-1991 is not in conformity with the provisions under Sections 22 and 23 of the I.D. Act, the Respondent-Management is justified in declaring the lockout in view of the mass casual leave submitted by the statutory staff on account of the panic created due to brutal attack on M.W1 on 24-10-1991. The Manage-

ment had no alternative but to declare lockout due to the absence of the statutory staff and as the Supervisory staff failed to undertake the responsibility of running the mining operations in the absence of Colliery Managers and for safety of the Mines and personnel. The point is thus decided in favour of the Respondent-Management.

14. Point (2) — The workmen in this reference are claiming wages for the period of lockout declared by the Respondent-Management. The learned counsel for the Respondent-Management submits that as the Management is justified in declaring the lockout in view of the prevailing conditions, the workmen are not entitled for wages for the lockout period. Admitted, the Management declared lock out not on account of the illegal strike of the workmen. There is also nothing on record to show that lock-out was declared due to any precipitating act on the part of the workmen. It is in the evidence of M.W1 that on 24-10-1991 at 12.00 noon while he was working in the Stores some unknown persons entered into the Stores through back door and attacked him with axes etc. It is not his case that he was attacked by any of the workmen of the Respondent-Management. As seen from First Information Report Ex. M4 also there is no whisper that the workmen were responsible for the brutal attack on M.W1. On the other hand, it is clearly mentioned therein that three unknown offenders masked their faces and entered into Store Room all with axes and beat Sri Vasant Kumar (M.W1). M.W1, M.W2 and M.W3 also did not specifically say that the workmen under this reference were behind the attack on M.W1. Even in the counter filed by the Respondent-Management, it is nowhere mentioned that these workmen were responsible for the attack on M.W1. Therefore, there is nothing on record to show that the Management had declared lockout as a consequence of any action on the part of the workmen. Admittedly, the lock out has been declared as the statutory staff and other officers went on mass casual leave on account of the panic created due to the brutal attack on M.W1 and it has been done spontaneously. Further it is in the evidence of M.Ws. 1 to 3 that no disciplinary action was taken against the officers who went on leave suddenly. There is also nothing on record to show that the said officers were not paid their salaries for that period. Hence there is no justification for withholding the wages for the workmen for the lockout period when salaries of the officers whose absence from their duties resulted in declaration of lockout, were paid. As earlier stated, the workmen were not at all responsible for declaring the lockout and as such there is no justification for withholding their wages. Considering the circumstances in this case, I am of the firm opinion that it will meet the ends of justice if the Respondents directed to pay the wages to the workmen for the lockout period i.e. from the second shift of 24-10-1991 to third shift of 26-10-1991. Thus I hold on this point that the workmen are entitled for wages for the lockout period.

1-5. In the result, Award is passed stating that the lockout declared by the Respondent-Management from second shift on 24-10-1991 to third shift of 26-10-1991 as a sequel to mass casual leave by the executives is justified and that the affected workmen on such lockout are entitled for their wages for the said lockout period. In the circumstances of this case, the parties are directed to pay their costs.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 19th day of August, 1995.

A. HANUMANTHU, Industrial Tribunal-I

Appendix of Evidence.

Witnesses Examined for the Petitioner-Workman :

W.W1 P. Raja Reddy

Witnesses Examined for the Respondent-Management :

M.W1 M. Vasant Kumar
M.W2 B. Bhunu Prasad.
M.W3 J. Anjaneyulu.

Documents marked on behalf of the Petitioner-Workmen

Ex. W1 10-11-91—Copy of representation of the petitioner-Union to the Conciliation Officer (C).

Documents marked on behalf of the Respondent-Management

Ex. M1 10-11-91—Extract of Coal Mines Regulations, 2452 GI/95—4.

Ex. M2 24-10-91—Letter addressed to the Director, Nizama Institute of Medical Sciences, Hyderabad by the Area Medical Superintendent.

Ex. M3 24-10-91—Xerox copy of discharge record of NIMS.

Ex. M4 24-10-91—Xerox copy of the F.I.R. 24-10-1991, F.I.R. in Crm. No. 60/91 of Srirampur Police Station.

Ex. M5 24-10-91—Letter to the Director General of Mines.

Ex. M6 to M10 24-10-91—Lockout notice issued for R.K. 1, R.K. 3, R.K. 4, M.K. 4 and R.K. 5 and SMG. 1.

Ex. M11 to M14 24-10-91—Notices of termination of lockout in the Mines.

Ex. M15 25-10-91—A telegram was sent to the Ministry and the Labour Department.

Ex. M16 to M28 25-10-91—Authorisation letters.

Ex. M29 to M78 Notice of the strike and lockout for SMG-I, SMG III KK IIA, KK. II, KKV, KK. VA, MVK Mines Shantikhani Mines. MVK-I, MVK-II, MVK-III, MVK-V, SRP-I, SRP-II, SRP-IIA, SRP-VI & III A, RK-7, RK-8, RKNT, RK-III, RK-IV, RK-V, RK-6 and Morgaon Pil.

Ex. M79 to M94 Termination of lockout notices issued to these areas.

Ex. M95 to M101—The strike report in the Mines.

Ex. M102 and M103—Overman Reports (two volumes).

Ex. M102/A—Part of Ex. M102 for the date 1-7-91.

Ex. M103/A—Part of Ex. M103 for dt. 22-5-1991.

नई दिल्ली, 29 मित्तम्बर, 1995

का. आ. 2822.—आधिकारिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफसीआई के प्रबन्धस्थल के सबद्ध नियोजकों और उनके कर्मकालों के बीच, अनुबंध में निर्दिष्ट आधिकारिक विवाद में केन्द्रीय सरकार आधिकारिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-95 को प्राप्त हुआ था।

[मं. एल :- 22012/456/एफ/90 आईपार (सी-II)]
राजा लाल, ईस्ट अधिकारी

New Delhi, the 29th September, 1995

S.O. 2822.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management for acquiring LL.B. Degree with effect received by the Central Government on the 25-9-95.

[No. L-22012/456/P/90-IR C-II]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 34 of 1991

In the matter of dispute between :—

T. B. Singh,
Executive MemberBhartiya Khadya Nigam Karamchari Sangh
410417 Jani Khawan
Narhi Lucknow

AND

Senior Regional Manager
Food Corporation of India
5-6 Habibulla Estate,
Hazaratganj, Lucknow.

AWARD

1: Central Government, Ministry of Labour, vide its Notification No. L-22012/456/F/90-I.R. (Coal. II) dated 3-9-91 has referred the following dispute for adjudication to this Tribunal :—

Whether Zonal Manager (N) New Delhi and Sr. Regional Manager Food Corporation of India, Lucknow were justified in imposing the penalty of stoppage of one increment with cumulative effect from the year 1987 and also rejecting appeal thereon and not expunging adverse remarks and also refusing to grant two additional increment for acquiring LL.B. Degree with effect from 1-4-84 and also reversion to the post of T. A. II to Sri H. N. Sahi, T. A. II FSD Gorakhpur ? If not what relief the workman is entitled ?

2. H. N. Sahi was originally appointed as Tec. Asstt. Gr. III on 20-4-72. Later on he was promoted as Tec. Asstt. Gr. II. In that capacity he was posted at Siswa Bazar in Gorakhpur District in the year 1981-82 and was entrusted of the job of purchase of paddy. It appears that this paddy was of sub-standard quality. Hence a chargesheet was given to him on 16-1-86 which is as under :—

The under signed proposes to hold an enquiry against Sri H. N. Sahi Tech. Asstt. Grade-II on misconduct —

Said Sri H. N. Sahi, Tech. Asstt. Grade-II while posted and functioning as Quality Inspector at Purchase Centre Siswa Bazar during the year 1981-82 for purchase of Paddy and taking over of rice delivery from the State Government failed to maintain absolute integrity, devotion to duty to serve the organisation honesty and faithfully and also failed to comply with the instructions contained in Kharif Plan 1981-82 inasmuch as he accepted rice stocks not conforming to laid down specifications which was found beyond rejection limit at the time of receipt in the depot. By this way he put the organisation to suffer huge financial losses which

was incurred by food Corporation of India on account of upgradation charges of rice etc. and due to other resultant losses.

The delinquent gave his reply inter alia, alleging that to accept paddy was not the job of T.A. (II), hence he cannot be held liable. B. D. Pathak was appointed Enquiry Officer. After recording evidence of parties he submitted his report dated nil, the copy of the same is annexure 7 filed alongwith the affidavit dated 26-12-91 of the concerned workman. In his report for the reasons given below, it was held by the enquiry officer that the charges were not proved :—

- (a) That wagons were despatched mostly on 4-1-82 in his absence by the SMI. No. C. B. has produced Exh. Q-3 which is the Certificate given by PW-1 Sri P. S. Prasad in support of C.O. presence at FSD Gorakhpur on 4-1-82.
- (b) Exhibit Q-1 is a letter of the Regional office by which District Manager Gorakhpur was asked to conduct joint analysis of the stocks as per the laid down procedure, but Ext. Q-5 indicates that no joint analysis was done associating the C. O.
- (c) R. F. C. Bill dt. 27-3-85 and dt. 19-3-85 in respect of the disputed stocks where by the R.F.C. has re-offered the stocks on 18-3-85 which was accepted on 19-3-85 with quality cuts leviable. RFC has accordingly submitted the bill about Rs. 65000/- for these 360 bags minus the quality cuts of about Rs. 2,000 and the payment have been made to the RFC for 320 qtls., by deducting the cost of 39.32 qtls. being the loss in quantity. The details of the claims and deductions also show that even the 'Labour and material charges' for 'solvaging the stocks have been deducted to the FCI and RFC accepted the payment without any protest. In brief the RFC has re-offered the 360 bags of disputed rice (of 81-82) during 1985 and has accepted the responsibility for loss in weight quality cuts and the labour material charges incurred by the FCI in solvaging the stocks. Hence the CO ceases to be responsible or purchasing sub standard stocks in view of RFC having accepted the full responsibility including the losses in weight by accepted payment of only 320 qtls of good rice. The stand taken by the CO that he did not purchase any sub standard rice is fully vindicated by RFC owning the total responsibility and FCI by paying only for actual weight and good rice did not suffer any loss.

It was held by the enquiry officer that the charge was not proved. When the matter went to Disciplinary Authority disagreed with the findings of the enquiry officer and held that charge against the concerned workman was proved as such by order dated 12-12-86, the Regional Manager passed an order imposing penalty of stoppage of one increment without cumulative effect. Feeling aggrieved by order dt.

12-12-86, the concerned workman preferred appeal which too was dismissed by the Appellate Authority vide its order dated 9/15-11-89 given by Zonal Manager (North).

3. It appears that during pendency of this enquiry the concerned workman had also claimed two increment in the light of circular No. 40 of 1985 as he had obtained professional Degree of LL.B. in 1974 this to the concerned workman by the management. It also transpires that the concerned workman was promoted from T.A. Gr. (II) to T.A. Gr. (I) on 28-4-1988 and he took charge at Jaipur as well. Later on by order dated 5-1-1989, he was reverted to the post of T.A. Gr. III.

4. Hence by way of present reference he has disputed his punishment order dt. 12-12-86 and also order of appointing authority refusing him to grant two increments on account of obtaining of LL.B. degree. Further the reversion order has also been challenged.

5. In the written statement it was alleged that the disciplinary authority has failed to properly exercise its discretion under Regional 69 of Food Corporation of India (Staff) Regulation 1971; a few reasons were recorded. There was no good ground for refusing to grant of two increments for obtaining LL.B. degree by him, it was also alleged that he could not be reverted to the post of TA Gr. (II) without affording him any opportunity. Lastly it may be mentioned that the order passed in appeal against the punishment has also been questioned.

6. The management Food Corporation of India has filed written statement in which it was alleged that the enquiry report was not based on sound reasoning, the disciplinary authority has every right to disagree with it and impose punishment and as such it is not bad in law. The appeal was rightly dismissed as it was time barred. The concerned workman was not entitled to special increments as disciplinary proceedings were pending against him. On the same ground reversing order was also passed.

7. The concerned workman has filed rejoinder in which factual allegations made in the written statement have been denied.

8. From the narration of facts it will be obvious that the main issue in this case is regarding imposition of punishment. The remaining three points are dependent upon the finding on first issue. If punishment order is upheld, naturally it will also follow suit. Similarly since claim for special pay, made during the pendency of enquiry and similarly reversion order was passed during the pendency of enquiry the order in this regard will also be upheld. If the punishment order is set aside its natural corollary will be to decide the remaining three issues against the management as the basis on which these matters are founded would collapse.

9. Now first it will be seen if the punishment order is bad in law. The copy of punishment order is on record which is annexure 8 attached with the

affidavit of the concerned workman. The relevant portion of this order is asunder —

And whereas, the undersigned after careful and dispassionate examination of enquiry report records and all the facts and circumstances associated with the case do not agree with the findings of Enquiry Officer and hold that Sri H. N. Sahi, Tech. Assistant-II negligent in performance of his duty in as much as he accepted BRL stocks of rice.

10. Sub-regulation (2) of Regulation 59 of Food Corporation of India (Staff) Regulation 1970 goes as under —

The Disciplinary Authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reason for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

11. It inter alia requires that in case disciplinary authority disagrees with the findings of the enquiry officer it has to record reasons and naturally this punishment is to be based. Thus recording of reasons is mandatory. A perusal of above observations of the disciplinary authority and punishing authority would go to show that it has not recorded any reasons at all. Why it has disagreed with the report of the enquiry officer and what are the reasons for accepting charge against the concerned workman has not been given. In this way mandatory provisions has been flouted in this case. Apart from this in the case of R. P. Singh versus State Bank of India 1990 LCD and Narain Misra versus State of Orissa 1980 SLR 658 it is held that even in the absence of rule in a case where disciplinary authority disagrees with the findings of the enquiry officer and proposes to impose punishment opportunity to the delinquent is mandatory which is the instant case has not been given. Hence from this point of view the principle of natural justice have been violated.

12. Thus for the above two reasons I have no hesitation in holding that order of punishment dt. 12-12-86 imposed on the concerned workman is bad in law and as such was not justified.

13. Admittedly the management has not awarded two special increments for having obtained LL.B. degree by the concerned workman, the reasons was that the enquiry was pending. When enquiry has now been finalised and punishment order has been held to be vitiated as such it no longer remains as a sleuthing block in the grant of two special increments in this regard. The concerned workman will be entitled for it. Similarly, the order of reversion dt. 5-1-89 from T.A. Gr. (I) to T.A. Gr. (II) of the concerned workman was based on the ground that enquiry was pending against him. As said earlier that enquiry did not exist at the time of passing of his order of reversion because the same has been held bad in law. Hence this reversion order has no legs to stand and has to be set aside. As regards the appeal against the punishment he finding in this regard has become redundant as the punishment itself has been set aside.

14. In view of above findings, my answer to the four parts of the reference is in the negative and in favour of the concerned workman. Consequently the punishment order dt. 12-12-86, is set aside. The concerned workman will be entitled to two special increments for having obtained LL.B Degree as prayed; the reversion order dt. 6-1-89 of the concerned workman reverting him from the post of T.A. I to T.A. II and he will be deemed to be as T.A. Gr. 'I' with all consequential financial benefits.

15. It is also ordered that the management shall pay Rs. 200/- to the workman as costs of the case.

16. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 अक्टूबर, 1995

का.आ. 2823.—आद्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता टेलीफोन के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आद्योगिक विवाद में केन्द्रीय सरकार आद्योगिक प्रधिकरण, कलकत्ता के पचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-95 को प्राप्त हुआ था।

[संख्या एल-40012/82/91-आई भारत (डी.पी.)]

के.बी.बी. उन्नी, डेस्क प्रधिकारी

New Delhi, the 4th October, 1995

S.O. 2823.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Calcutta as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Calcutta Telephones and their workmen, which was received by the Central Government on 29-9-95.

[No. L-40012/82/91-IR (DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 36 of 1991

PARTIES :

Employers in relation to the management of Calcutta Telephones.

AND

Their Workman

PRESENT :

Mr. Justice K. C. Jagadeb Roy, Presiding Officer

APPEARANCE :

On behalf of Management.—Mr. T. Chowdhury, Advocate.

On behalf of Workman.—Mr. M. S. Dutta, Advocate.

STATE : West Bengal. INDUSTRY : Telephones.

AWARD

By Order No. L-40012/82/91-IR (DU) dated 12-14-11-1991, the Central Government in exercise of its powers under Section 10(1) (d) and sub-section (2A) thereof the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Calcutta Telephones, Deptt. of Telecommunications, Teher Mansion, 8 Bentick Street, Calcutta-1, in terminating the services of Shri Rajat Chatterjee, casual workman w.e.f. 1-1-89 is legal, proper and justified? If not, to what relief the workman is entitled to?"

2. The workman filed his written statement on 29-1-1992 stating therein that the concerned workman was appointed as a casual worker under the Calcutta Telephones, a Central Government Company against a permanent vacancy and was posted in the section of S.D.O.P. (Zone-IV), 26/27 Exchange External at P-9/10, Ganesh Chandra Avenue, Calcutta-13. The workman asserted that even though he was appointed as casual worker, he was working against a permanent post and doing the job of perennial nature which vacancy still exists and was doing his job to the full satisfaction of his superiors. To his utter surprise, according to the workman the Company terminated his service with effect from 1-1-1989 without assigning any reason whatsoever even though he had put in 2 years of continuous service, particularly having worked 260 days in the year 1988. According to him, he having been in continuous service of the Company for not less than one year before his termination, he was entitled to the benefit's guaranteed to him under section 25F of the Industrial Disputes Act, 1947. But by utter disregard to this provision contained in section 25F, his service had been terminated. He accordingly prays that the order of termination should be declared void ab initio and he would be declared to be continue in service notwithstanding with this illegal order of termination which is invalid and against the provisions of law. He has referred to Annexure-A annexed to his written statement, which according to the workman a certificate granted to him by his immediate superior authority Mr. A. K. Bhattacharjee. He tried to make out a case in the written statement that it is the admitted fact that he had served for 200 days in 1986, 242 days in 1987 and 260 days in the year 1988 and by the definition of continuous service contained in section 25B of the Industrial Disputes Act, 1947, he having been served for 260 days in 1988, would be deemed to be treated as a workman who had worked continuously for a period of one year within 12 months of the date of his retrenchment. He raises positive assertion in his written statement that this termination of service amounted to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947.

3. The management (Calcutta Telephones) filed the written statement on 5th March 1992, wherein they averred and challenged the statements of the workman stating that the workman concerned had actually worked for 222 days as mentioned in paragraph 5 of their written statement and had never

worked for 260 days as alleged therein; the work rendered by him was not continuous and the workman had worked only for 222 days on different spells during the year 1986-1987 only. It was further stated in their written statement in paragraph 8 that the certificate of Shri A. K. Bhattacharjee which was annexed as Annexure-A to the written statement of the workman (which is now marked Ext. W-1 in the proceeding before the Tribunal) was not at all issued by the management to the workman and the same is only a departmental office document and subsequently on scrutiny was found to have contained incorrect statements. The job of the present workman was terminated on completion of the particular job for which he was engaged.

4. The workman thereafter filed a rejoinder, to the written statement of the management, challenging certain assertions made in the written statement. In the rejoinder which was filed on 28th April 1992, the statement of the management that the workman never worked in 1988 was stated to be incorrect and the workman asserted that this wrong statement could be proved against the management if the attendance register and the Wage Payment Register on ACG-17 bouchers for the year 1988 were filed before the Tribunal and it was stated in paragraph 4 of the said rejoinder that the assertion of the workman in writing before the Assistant Labour Commissioner giving details of the period of engagement of the workman under the Company such as 200 days in 1986, 242 days in 1987 and 260 days in 1988, had not been challenged by the management before the Assistant Labour Commissioner.

5. In support of the contention of the workman, he had examined himself as WW-1. The Management however choose not to examine any witness, though I find from the records that some ACG-17 vouchers have been marked Ext. M-1 and a xerox copy of a sheet from the accounts showing a sum of Rs. 12,415/- having been paid to the workman and 9 others being arrear pay from February 1987 to May 1987 was marked Ext. M-2. The enclosed paper to the document Ext. M-2 shows that out of this Rs. 12,415/- the present workman received a sum of Rs. 1323/- as arrear for certain days of work amounting to 81 days in all in the year 1987 only.

6. The question for consideration in this reference is whether the termination of service of the workman with effect from 1-1-1989 be termed as retrenchment and if so, if it would be found that the requirements of section 25F was not complied with, whether that order of termination should be declared void ab-initio and what relief the workman was entitled as a consequence to that.

7. What amounts to retrenchment has been dealt with in several judgements of the Hon'ble Supreme Court and has been pointedly answered reiterating the previous judgements of the Apex Court in a five Judges Bench of the Hon'ble Supreme Court in Punjab Land Development & Reclamation Corp. Ltd., Chandigarh etc. & several others-Vs-Presiding Officer, Labour Court, Chandigarh etc. & several others, reported in 1990(1) LLJ 70. The Apex Court held by applying the reasonings, principles and precedents set by previous judgements to the definition of section 2(oo) of the Act that the "retrenchment" meant the termination by the employer

of the service of a workman for any reason whatsoever except those expressly excluded in that section.

It is worthwhile to quote section 2(oo) of the Industrial Disputes Act, 1947 at this stage :

"2(oo) "retrenchment" means the termination by the employer of the service of the workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation of the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continued ill-health."

Earlier a three Judges Bench of the Hon'ble Supreme Court in a case reported in 1977(1) LLJ SC at page 1 had stated that no conflict was there between Sundarmani's case and the decision in H. A. Shukla's case and held that even though service had come to an end by efflux of time that would amount to retrenchment as that was not one of the four statutory exceptions for taking it out from the definition of retrenchment contained in section 2(oo) of the Act. In the said judgement the Hon'ble Supreme Court while referring to its decision in the State Bank of India-Vs-Sundarmony reported in 1976(1) LLJ 478 (SC) observed that termination takes place when a term expires, either by active step of the master or because of the running out of the stipulated term. "Termination" embraces not merely the act of termination by the employer but the fact of termination however produced. In the present case therefore the termination even if it is assumed that the work had ended, still come within the purview of the definition of section 2(oo) of the Act and would therefore amount to termination.

8. That being the case, the next question arises whether in this particular case the requirement of section 25F of the Industrial Disputes Act, 1947 was attracted to be complied. This depends on whether the workman had put in one year of continuous service within 12 months of the date of the impugned termination. As I have already indicated above the one year of "continuous service" has been given a statutory meaning in Section 25B of the Industrial Disputes Act, 1947 and if the workman had put 240 days of actual work, the work having been required to be done overground, it would amount to one year of continuous service in the eye of law.

9. The workman have examined him as the sole witness. In his evidence he had stated that he had worked from 1986 to 1988 continuously and used to report for his duties to Shri A. K. Bhattacharjee or Shri A. K. Mondal. He was required to sign the Attendance register every day, which was kept in the custody of Shri A. K. Mondal and used to draw his monthly remuneration by signing the ACG-17 vouchers. The Annexure-A to the written statement under the signature of Shri A. K. Bhattacharjee which was marked as Ext. W-1 was given to him as a certificate by Shri A. K. Bhattacharjee who while gave this xerox copy to him, had kept the original in the office. The document shows the period of work of

the workman in 1986, 1987 and 1988. He proved the signature of Mr. A. K. Bhattacharjee found on the said document. He has stated in his deposition that he was not given any retrenchment compensation or notice pay before his retrenchment. In the cross-examination he had stated and maintained his assertion that he worked under the Calcutta Telephones in the years 1986, 1987 and 1988 and was employed as a line helper. He categorically stated in the cross-examination that he was employed for 200 days in 1986, 242 days in 1987 and 260 days in 1988 and used to receive his payments on signing ACG-17 forms and that he worked continuously during the 3 years 1986, 1987 and 1988. He had also categorically stated that the management's assertion that he never worked for any day in 1988 was wrong. According to him only some of the ACG-17 forms were produced which were marked Ext. M-1. It is also stated by him that he made representation to the Assistant Labour Commissioner which is marked Ext. W-2 in which he had mentioned the particular periods during which he worked under the Calcutta Telephones. He also maintained that he used to sign attendance register on attending the office. According to him, Ext. M-2 shows that he was paid as arrear payments that he was entitled to get because of the enhancement of pay. He maintained that Ext. W-1 is a certificate of work issued to him. In his examination in chief on 9-2-1993 he has stated that Mr. A. K. Bhattacharjee was very much in the Court Room at the time of his deposition and he also identified him to the Tribunal. No reason is shown by the Calcutta Telephones as to why they did not choose to examine Sri Bhattacharjee as witness on their side to explain Ext. W-1 and to disown the statement contained in the same.

10. In Gopal Krishnaji Ketkar-Vs-Mohammad Haji Latif & Ors. reported in ABR 1968 SC 1413 the Apex Court on the face of the argument that no part of the appellant's duty was to produce the accounts unless he was called upon to do so and the onus was upon the respondents to prove the case, held thus "We are unable to accept this submission as correct. Even if the burden of proof does not lie on a party, the Court may draw adverse inference if he withholds important documents in his possession which can throw light on the facts of the case. It is not, in our opinion, a sound practice for those desiring to rely upon certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof....."

11. In the present case, it was the positive assertion of the workman that he was called upon to sign the attendance register everyday. Nothing was proved from the side of the management either by examining their own witness or on cross-examination of the workman's witness No. 1 that the statement was not correct. In which event, it was required of the management to produce the attendance register to show that the workman did not work for the period he claimed. On the other hand the workman had already produced the certificate of work from Mr. A. K. Bhattacharjee (Ext. W-1) his immediate superior officer. The existence of Ext. W-1 is not challenged in the written statement of the management, who had knowledge of the document as it was annexed as

Annexure-A to the written statement of the workman. On the other hand, the management while not denying the genuineness of the document took the stand that this document was not a certificate and was intended for the departmental use. This does not help the management in any way.

12. In Mohan Lal-Vs-Bharat Electronics Ltd., reported in 1981 (II) LLJ 70 at page 78 the Apex Court held as follows "Therefore the termination of service would constitute retrenchment. As the precondition for valid retrenchment is not complied, the termination of service is ab-initio void, invalid and inoperative. He therefore now be deemed to be in continuous service" and it was further held in paragraph 18 of the said judgement that he would be entitled to all the consequential benefits namely back wages in full and other benefits, if any.

This view was reiterated by the Hon'able Supreme Court in management of Karnataka State Road Transport Corp., Bangalore-Vs-Boraiah M & Anr. and Karnataka State Road Transport Corp., Bangalore Vs-Sheikh Abdul Khader & Ors. etc., reported in 1984 (I) LLJ 110.

13. In consideration of the evidence on record, I come to hold that the present workman had put in one year of continuous service prior to his retrenchment, so as to entitle him the benefit of section 25F of the Industrial Disputes Act, 1947. Since admittedly the requirements of section 25F of the Industrial Disputes Act, 1947 was not complied with, the order terminating the service of the workman with effect from 1-1-1989 cannot be allowed to stand and is declared void ab-initio, invalid and inoperative. The workman shall be deemed to be in continuous service and he is entitled to all the consequential benefits namely, back wages in full and other benefits, if any.

It is to be stated here that the management has not adduced any evidence to show that the workman was gainfully engaged himself since 1-1-1989 till today.

The reference is answered accordingly.

Dated, Calcutta, the 19th September, 1985.

K. C. JAGADEB ROY, Presiding Officer

नई दिल्ली, 4 अक्टूबर, 1995

का.प्रा. 2824.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार दैलीकाम डिस्ट्रिक्ट मैनेजर, तीर्छनेलवेली के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मग्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-95 को प्राप्त हुआ था।

[संख्या एन-40012/100/92-आई आर (डी.प.)]
के बीच उनी, डैस्ट्रिक्ट अधिकारी

New Delhi, the 4th October, 1995

S.O. 2824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the management of Telecom District Manager, Tirunelveli and their workmen, which was received by the Central Government on 29-9-95.

[No. L-40012/100/92-IR(DU)]
K. V. B. UNNIV, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Monday, the 4th September, 1995

Present:

THIRU N. SUBRAMANIAN, BABL INDUSTRIAL TRIBUNAL INDUSTRIAL DISPUTE NO. 94/1993

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workman and the Management of Telecom District Manager, Tirunelveli).

BETWEEN

Shri R. Hariharan,
C/o M. Murugaiah,
Circle Organising Secretary,
NFTEE-4, Cross Bar Exchange,
Rajapalayam—626117.

AND

The Telecom District Manager,
Tirunelveli-627011.

Reference:

Order No. L-40012/100/92-IR(DU), dated 17-9-93, Ministry of Labour, Govt. of India, New Delhi.

This dispute coming on for final hearing on Monday, the 22nd day of August, 1995, upon perusing the reference, Claim and Counter statements and all other material papers on record and upon hearing the arguments of Tvl. PSV Giridhar and D. Geetha, Advocates appearing for the Workman and of Smt. C. K. Vishnupriya, Addl. Central Government Standing Counsel, appearing for the Management, and this dispute having stood over till this day for consideration, this Tribunal made the following:

AWARD

The Government of India by its Order No. L-40012/100/92-IR(DU), dt. 17-9-93, referred for

adjudication by this Tribunal the following dispute under section 10(1)(d) of the Industrial Disputes Act, 1947.

“Whether the action of the District Telecom Manager in terminating the services of Shri R. Hariharan, is justified ? If not, to what relief he is entitled ?”

2. The case of the petitioner is as follows:

Petitioner was originally appointed as casual labourer on 26-8-74. He is son of an Ex. serviceman. He has been rendering service continuously till January 1987. As the petitioner fell sick, he was unable to attend the work till January 1988. In February 1988, he started working again regularly. To his surprise on 23-10-89, when he reported for duty, the second respondent refused to allot any work and directed that not to report for work any longer. When the petitioner questioned as to the reason for his termination, the respondent refused to give any reason. Repeated request made by the petitioner & representations made were rejected. So, the petitioner preferred a petition for conciliation before the Asst. Commissioner of Labour (Central) Madras on 7-11-91. The Conciliation Officer submitted his failure report on 29-5-92. The termination of services of this petitioner is not reasonable and illegal. The petitioner has put in more than 240 days of service in a year before his termination. No notice was served upon him before terminating his services. No retrenchment compensation was paid to him. The Tirunelveli District employs more than 100 workmen. As such they ought to have obtained the prior permission of the Government. Several juniors of this petitioner have been retained in service and this petitioner's services alone were terminated. The respondent without any legal basis terminated the service without following the procedure laid down under the I.D. Act. Hence the dispute has been raised.

2. The respondent filed his counter contending that the allegation that the petitioner was in continuous service from 16-8-74 is not correct. He was engaged by the Assistant Engineer (Coaxial), Virudhunagar, from 26-8-74 to 16-1-75. He did not turn up for work for 4 months. Again from August, 1975 to July 1976 he has worked for 62 days. In 1978 he has worked for only 70 days. In 1981 he has not worked for 240 days in any single year. Because of the long breaks which cannot be condoned by his Superiors he could not be selected. His age should be between 18 to 25 years as on 1-7-85. He was 29 years old as his date of birth is 28-5-56. He could not be given any age relaxation. The Postal and Telegraph department is not an industry as defined in the Act. The question of retrenchment does not arise in this case. In 1982, the petitioner was considered by the Departmental Selection Committee for selection and regularisation as regular Mazdoor

or Group D Staff. Due to over-age he could not be selected. In 1985 he had not qualified for regularisation. The casual labourer is only an employee by Contract of Engagement and not a Civil servant holding temporary post. The principles of Civil servant getting back wages on illegal termination of his service on presumptive continuity of his service cannot apply to Casual labourer. Hence the petition may be dismissed with costs.

4. By consent Exs. M.1 to M. 3 and W-1 to W-4 were marked. The arguments of both counsels were heard.

5. The point for consideration is: Whether the action of the District Telecom Manager in terminating the services of Shri R. Hariharan is justified? If not, to what relief he is entitled?

6. The point: Admittedly, the petitioner was employed as a casual labourer on 28-6-74. According to him he was absent from duty due to his ill health from January 1987 to January 1988. On the other hand it is contended by the respondent that he was not regular in attending the duty. He was absent for so many days from the date of his appointment. In 1988 he was in service till his termination. He was terminated on 23-10-89. He has worked for 213 days in 1989 prior to his termination. According to the petitioner, he has worked for more than 240 days in a year prior to his termination. In 1988 October, he has worked the full month of 31 days. In November 24 days and December 4 days. Even excluding the days worked in October, 1988, the petitioner has worked 241 days prior to his date of termination. Ex. M. 3 is the Casual labourer work details in respect of the petitioner. Therefore, it is argued by the petitioner's counsel as the petitioner has worked for more than 240 days in a year prior to the date of his termination, the termination will amount only to retrenchment entitling the petitioner the benefits on Section 25-F of the I.D. Act. As per the decision reported in 1971 I-LIJ Page 241 even the Casual labourer who has worked for more than 240 days prior to the date of termination in the year is entitled to the benefit of Section 25F. Since the petitioner has worked for 241 days prior to the date of his termination he is entitled to the benefits of Section 25-F. It is conceded by the respondent's counsel that no notice u/s. 25F was given to the petitioner before termination of his service or the compensation required to be payable u/s. 25-F (b) was not given. As per the decision reported in AIR 1960 Supreme Court, Page 610, that the requirement prescribed by it is a condition precedent for retrenchment of a workman and non-compliance of the said condition renders the impugned retrenchment invalid, and inoperative. Therefore, the termination of the service of the petitioner which amounts to retrenchment becomes invalid and inoperative. In such case the petitioner is entitled for reinstatement.

In the result, an award is passed directing the respondent to reinstate the petitioner in service with continuity of service and without back wages. No costs.

Dated, this the 4th day of September, 1995.

Sd/-
Illegible

Industrial Tribunal

WITNESSES EXAMINED

For both sides : None

DOCUMENTS MARKED

For Workman :

Ex. W-1/7-11-91 : 2-A petition filed by the Workman Thiru R.Hariharan, before the Assistant Labour Commissioner (Central), Madras-6 (Xerox copy).

W-2 : Counter to Ex. W-1 filed by the Management (Xerox Copy).

W-3/26-2-92 : Reply to Ex. W-2 filed by the workman before the Asst. Labour Commissioner (Central), Madras-6 (Xerox copy).

W-4/29-5-92 : Conciliation Failure Report (Xerox copy).

For Management :

M-1/5-2-91 : Letter from the Management to the workman (Xerox copy).

M-2/ : Checklist for recruitment of Group "D" (Non-Test) for the year 1985.

M-3/ : CLR work details of the workman (copy).

नई दिल्ली, 4 अक्टूबर, 1995

का.आ. 2825—आंदोलिक विवाद अधिनियम, 1947 (1947 का 14) की द्वारा 17 के अनुमति में, केन्द्रीय सरकार वैस्टर्न रेलवे के प्रबन्धतात्व के सबढ़ नियोजकों और उनके कर्मकारों के बीच, अनुवध में निर्दिष्ट आंदोलिक विवाद में आंदोलिक अधिकरण, कोटा के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-95 को प्राप्त हुआ था।

[संस्था एन-41011/17/90-आई आर बी आई]
के.वी.वी.उन्नी, ईस्क अधिकारी

New Delhi, the 4th October, 1995

S.O. 2825.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kota as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Railway and their workmen, which was received by the Central Government on the 29-9-1995.

[No. L-41011/17/90-IRBI]
K. V. B. UNNY, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा/गज.
निर्देशप्रकरण क्रमांक : औ. न्या. (केन्द्रीय)-7/94
दिनांक न्यायित : 28/9/94

प्रमाण: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के
श्रादेशीय एल.-41011/17/90/आई. आर. (डी. य.)
दिनांक 21/10/90

औद्योगिक विवाद अधिनियम, 1947

माय

छाया वर्गेह द्वारा डिविजनल सेक्रेटरी, पश्चिम रेन्डे
कर्मचारी परिषद, भीमगंज मण्डी, कोटा ।

—प्रार्थिगण श्रमिक

एवं

हिप्टी चीफ (डॉजीमियर) के, सी. पी. (वेस्टन रेलवे,
कोटा)

—प्रतिपक्षी नियोजक

उपस्थित

श्री आर. के. चाचान,

प्रार. एच. जे. एम.

प्रार्थिगण श्रमिक की ओर से

श्री. ए. डी. ग्रोवर

प्रतिनिधि—

प्रतिपक्षी नियोजक की ओर से— श्री कौणल चतुर्वेदी

अधिनियम दिनांक : 5/8/95

अधिनियम

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रारम्भ
में निम्न निर्देश औद्योगिक विवाद अधिनियम, 1947 की
धारा 10(1)(य) व उपधारा (2-क) के प्रत्यर्गत उक्त
श्रादेश के जरिए केन्द्रीय सरकार, औद्योगिक न्यायाधिकरण,
नई दिल्ली को अधिनियमार्थ सम्प्रेषित किया गया था जोकि
इस न्यायाधिकरण को पत्रावली सहित स्थानान्तरित होकर
प्राप्त हुआ:—

"Whether the action of Dy. Chief Engineer (KCP) Kota, not granting scale rate of Gangman to 14 female
Khalasi (particulars are given in the annexure) is
justified? If not, to what relief the workmen are
entitled?

[F. No. 41011/17/90-I RDU]

1. Smt. Chhaya D/o Nilamber.
2. Smt. Shanti D/o Ramoo.
3. Smt. laxmi D/o Ujjal.
4. Smt. Noorpati D/o Bhagirath.
5. Smt. Parbati D/o Devar Chand.
6. Smt. Chanchala D/o Badannakho.
7. Smt. Ambika D/o Dhanbal.
8. Smt. Pano D/o Arjun.
9. Smt. Urmila D/o Ramoo.
10. Smt. Boula D/o Berjo.
11. Smt. Shankuntala D/o Raghunath.
12. Smt. Banita D/o Simachand.
13. Smt. Kekaiva D/o Jagdish.
14. Smt. Malti D/o Addal."

2. उक्त निर्देश पत्रावली ग्रादेश दि. 20/7/94 के
द्वारा स्थानान्तरित होकर प्राप्त होने पर न्यायाधिकरण में
दर्ज एजिस्टर की गंभीर पक्षकारों को भूचना जारी की गयी
2452 GI/95—5.

जिस पर दोनों पक्षों की ओर से अपनी-अपनी उपस्थिति दी
गयी।

3. उक्त प्रकरण आज साड़े प्रार्थी नियत था परन्तु
प्रार्थी प्रतिनिधि थी ए. डी. ग्रोवर ने उपस्थित होकर
प्रकट किया कि वे इस मामले का अव नहीं चलाना चाहते
और विवाद रहित अधिनियम पारित किए जाने का निषेद्ध
करने वें। पत्रावली के अवलोकन में प्रकट होता है कि यह
निश्चेष अवस्था 90 में लम्बित है और अभी तक भी प्रार्थी-
पक्ष की ओर से माध्य प्रस्तुत नहीं की गयी है। अतः
उक्त रामस्त परिस्थितियों में यह स्पष्ट प्रकट होता है कि
प्रार्थी पक्ष को इस प्रकरण में अव कोई स्वित नहीं रही है,
अतः प्रकरण में 'विवाद रहित अधिनियम' पारित किया
जाता है।

इस अधिनियम को सम्चिन सरकार को नियमानुसार
प्रकाशनार्थ भित्रवाया जाए।

आर. के. चाचान, न्यायाधीश

नई दिल्ली, 4 अक्टूबर, 1995

का.आ. 2526—औद्योगिक विवाद अधिनियम, 1947
(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय
सरकार फेडरल बैंक लि. के प्रबन्धदाता के संबद्ध नियोजकों
और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक
विवाद में लेवर कोर्ट, इरनाकुलम के पंचपट को प्रकाशित
करती है, जो केन्द्रीय सरकार को 28-9-95 को प्राप्त हुआ था।

[संख्या एल-12012/170/92 आई आरडी 1]

के.बी.बी. उन्नी, डैम्स्क अधिकारी

New Delhi, the 4th October, 1995

S.O. 2826.—In pursuance of Section 17 of the
Industrial Disputes Act, 1947 (14 of 1947), the
Central Government hereby publishes the Award
of the Labour Court, Ernakulam as shown in the
Annexure, in the industrial dispute between the
employers in relation to the management of
Federal Bank Ltd. and their workmen, which was
received by the Central Government on the
28-9-95.

[No. L-12012/170/95-IRB]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR
COURT, ERNAKULAM
(Labour Court, Ernakulam)

(Monday, 14th day of August, 1995)

PRESENT :

Shri. Varghese T. Abraham, B.A., LL.M.,
Presiding Officer.

Industrial Dispute No. 14 of 1992 (C)

BETWEEN :

The Chairman, The Federal Bank Ltd.,
Alwaye, P. B. No. 103, District Ernakulam-683101 (KERALA)
AND

Shri. K. M. Mathai, Kumarickal House, P.O.,
Pazhamthottom, District Ernakulam,
KERALA-683 101.

REPRESENTATIVES :

M/s. B.S. Krishnan Associates,
Advocates, Cochin-16. ... For Management
Sri. M. Ramachandran,
Advocate, Cochin-17. ... For Workman

AWARD

The Government of India as per order No. L-12012/170/92-IR.E. III dated 1-9-1992 referred the following issue for adjudication :

"Whether the action of the management of M/s. Federal Bank Ltd., Alwaye Dist. Ernakulam (Kerala) in dismissing Shri. K. M. Mathai, Clerk, w.e.f. 22-4-90 is justified ? If not, to what relief the workman is entitled to?"

2. The delinquent workman Sri. K. M. Mathai was dismissed from service with effect from 22-4-90. The charges levelled against him are :—

- (i) Doing any act prejudicial to the interest of the bank.
- (ii) Fraud.
- (iii) Cheating.
- (iv) Breach of any rule of business of the bank.

He was suspended pending enquiry. Explanation given by the workman was found unsatisfactory. Hence an enquiry was held by the management. Sri. James Augustin, Officer of the PIR Department of the management bank conducted the enquiry. He examined MWs 1 to 11 and marked Exts. M1 to M53. The Enquiry Officer found that the delinquent is guilty of misconduct of doing acts prejudicial to the interest of the bank. The disciplinary authority imposed the punishment of dismissal. This order of dismissal is under challenge in this reference.

3. In order to better appreciate the facts constituting misconduct, they require a little more narration :—

"Shri. M. V. Poulose, Mundanparambil, Kumarapuram P.O. is the Managing Partner of the firm viz. M/s. Travancore Construction Co., Kumarapuram. This company is maintaining a C. C. Account with the Pazhamthottom Branch of the bank. On 15-2-88 when Sri. M. V. Poulose came to the Pazhamthottom branch to withdraw some money, he found discrepancies in the balance outstanding in the firm's account and for close scrutiny, he brought his pass book and found that an entry of Rs. 18,000/- recorded in the pass book with date 10-9-87 as deposit was not accounted in the ledger. Corresponding to another deposit of Rs. 20,000/- dated 14-12-87 in the pass book, only Rs. 10,000/- was seen accounted in the ledger.

There was another entry of Rs. 58/- recorded in the ledger as interest but it was not shown in the pass book. In short as on 28-12-87 ledger balance of the firm was short by Rs. 28,058 when compared with the pass book balance. It was detected by the part only on 15-2-88. Sri. Mathai had financial dealings with Sri. M. V. Poulose. Actually out of the total difference of Rs. 28,058/-, Rs. 18,000/- represents the amount borrowed by Sri. Mathai from Sri. Poulose on 18-8-87 which on his demand Sri. Mathai told that amount due to him was already remitted to the bank. But instead of remitting Rs. 18,000/- to the bank, Sri. Mathai made a fictitious entry of Rs. 18,000/- in the pass book of Shri. Poulose and dated it on 10-9-87 seen entered on page 13 of the pass book. It was also noticed that this amount of Rs. 18,000/- was paid by Sri. Poulose to Sri. Mathai by a cash cheque No. CD/p-970673 dt. 18-8-87 drawn on cash credit account No. 3/84 on his specific request. In order to conceal the identity of the recipient of cash, he arranged one E. S. Jamal to receive the cash but Sri. Jamal was only a benami for Sri. Mathai. In order to identify the paymnt of cheque Sri. Poulose had made and endorsement over the counterfoil of the cheque indicating that the cheque was paid to Sri. Mathai. Sri. Mathai posted the cheque in the CC account and Manager Sri. Hari passed the cheque. Sri. P. K. Sabu was the cash clerk on the day though it was branded cash paid stamp but not Rs. 10,000/- represented amount entrusted to Sri. Mathai by Sri. Poulose through Sri. Mani, another partner of the firm, to be remitted to their CC account No. 3/84, which he did remit only partially as below :

On 14-12-87 Sri. Mani, another partner of the firm, handed over an amount of Rs. 20,000/- at the Bank to Sri. Mathai to be remitted to their C.C. Account 3/84, Sri Mathai after obtaining a blind CD pay-in-slip signed by Sri. Mani remitted only Rs. 10,000/- in their account and pocketed the balance Rs. 10,000/-. In order to cover up the misappropriation he deliberately recorded Rs. 20,000/- in the pass book whereas the corresponding entry in the ledger was only Rs. 10,000/-. This fictitious entry of Rs. 20,000/- was found entered in page No. 14 of the pass book. Remaining dfference of Rs. 58/- represents the amount

which debited in the account on 30-9-87 but was not entered in the pass book. Thus the resultant effect in the balance due to the above discrepancy was Rs. 28,058/- as on 28-12-87.

In verifying the pass book of CC account No. 3|84, it was observed that entries upto 28-12-87 only had been recorded in the pass book. Balance shown as per pass book as on 28-12-87 was Rs. 59,508|90 (Cr.), whereas ledger account it was only Rs. 31,450|90 (Cr.) As such there was a shortage of Rs. 28,058/- in the ledger balance. It was also observed that balance struck off the period from 19-9-86 to 28-12-87 were not authenticated by any official. Original pages of the pass book from pages 8 to 15 were replaced by Sri Mathai with fresh pages bearing identical page numbers of another pass book. From the unused CD pass book kept at the branch the pass book from which the pages taken out and substituted by Sri Mathai also was found out subsequently during the investigation. Pass books are stitched usually with white twine. But this crooked up pass book was stitched by green twine. Majority of entries in pages prior to page No. 8 in the pass book were made by Sri George P. Mathai, the previous Manager of the branch and the last balance in page No. 7 was found authenticated by the Manager. But from page No. 8 onwards, it was observed that left hand side of the pass book except the first two entries written by Sri. K. C. Isac, Bankman of the branch and the right hand side of the same page and all the entries in subsequent pages were made as per style of handwriting by Sri Mathai. Entering transactions in the pass book partly by one person and partly by others was not the practice followed hitherto in the bank. Without replacement of the concerned pages, it was impracticable to see such entries recorded by different persons. Though entries in the pass book of CC a/c 3|84 was done by Sri P. K. Sabu also no entry made by him were found in the pass book available. Last time this pass book was taken back by Shri K. V. Jacob on 9-1-88 and it was Sri. Mathai, Clerk delivered the pass book to him. In the light of the above it is alleged that Sri Mathai by replacing the pages of the pass book with fresh pages made fictitious entries to mis-

lead the customer and to suit to his requirements and destroyed the original pages of the pass book.

Apart from this misappropriated amount of Rs. 28,000/- Sri Mathai was indebted to Sri M. V. Poulose for another Rs. 18,000/- also.

It appears that grievance of Sri M. V. Poulose, the customer was settled through the intervention of Sri. P. K. Sankarankutty, Puratheparambil, Pazhamthottom and Sri Mathai, Munduparambil, Kumarpuram as mediators. As per the settlement Sri Mathai agreed to pay back the money due to Sri Poulose on or before 28-2-88 and Sri Mathai signed a stamp paper and delivered it to Sri Poulose as a security for fulfilment of the terms of agreement. Accordingly Shri Mathai paid Rs. 12,000/- on 20-2-88 though the amount agree to be paid on the day was Rs. 20,000/-. Further payments were made by him on 25-2-88 for Rs. 10,000/- and Rs. 2,400/- and a gold chain weighing 3-1/2 sovereign approx prior to 28-2-88. Sri M. V. Poulose gave a letter dt. 3-3-88 to the Manager admitting the pass book balance as on 15-2-88 only after receiving the major portion of his dues from Sri Mathai.

Sri. Chothy, S/o Ayyappan an illiterate labourer and a close neighbour of Sri. Mathai was having an SB a/c No. 505 with the branch. Foul play in the accounts of the branch and the consequent sending of balance confirmation letter to customers had been flashed by that time locally and Shri K. M. Mathai was transferred to the Regional Office, Ernakulam from 6-2-88. On 17-3-88 while Sri. Chothy was working in the landed property of one Chavanchira Vagrhees, W/o Sri. Varghese who was aware of his account with the Bank asked him whether he received any letter from the Bank regarding his account balance with the bank. Since he did not receive the letter and also inspired by Mrs. Varghese, he met the Manager on the same day itself and when the Manager asked him to bring the pass book, Shri Chothy told to the Manager that the pass book was taken by Sri Mathai 2-3 days back by saying that there was a difference of Rs. 100/- in the pass book and for verification at branch level, pass book Smt. Karthu, W/o Sri Chothey met Sri Mathai on 18-3-88 morning at his residence and was told by him that the pass book was

at the branch. When Smt. Karthu contacted the Manager on the same day she could not get the pass book. At the instance of the Manager, Smt. Karthu brought Sri. Chothy to the branch. While Smt. Karthu along with Sri Chothy was coming to the branch, Sri. Mathai met them on the way and requested them not to go to the branch and admitted to them that he has misappropriated Rs. 2,000/- from Sri. Chothy's account. But they went to the bank at 3.15 p.m. by that time one Sri. Jacob, a friend of Sri. Mathai had remitted Rs. 2,300/- to the SB account No. 505 of Sri. Chothy though no amount was due from Sri. Jacob. At that time pass book of Sri. Chothy tendered by Sri. Jacob was seized by the Manager. When contacted by Sri. Chothy, the Manager told him that there was a balance of Rs. 2,322/45 in Sri. Chothy's account as on that date. But according to Sri. Chothy, there ought to have been at least a balance of Rs. 4,000/- in the account.

Shri Chothy and Smt. Karthu returned from the bank saying that they would be back on 19-3-88, Saturday. But on 19-3-88 morning when Sri Chothy contacted Sri Mathai at his residence he told Sri. Chothy that he had already remitted Rs. 2,300 on 18-3-88 and the balance would be remitted on that day itself and Sri. Chothy can take the money from the Bank by 1 p.m. When Shri. Chothy reached the Bank it was found closed that being a Saturday. On his return from the branch, he met Sri. Abraham Chakkungal, Sales Tax Officer and a local man, and appraised of the situation. Through the intervention of Shri Abraham it was agreed by Sri. Mathai to pay what was due to Sri. Chothy after receipt of salary for the month of March, 1988. It appears that on 2-4-88 an amount of Rs. 2,230 was also remitted by the same Sri. Jacob to the account No. 505 of Sri. Chothy and settled the matter. Though Sri. Mathai had misappropriated Rs. 4,530 from the SB account of Sri. Chothy, the pass book shows only one fictitious entry for an amount of Rs. 1,100 dated 24-10-86 entered by Sri. Mathai for which no corresponding entry was made in the ledger. Entries in the pass book were incomplete. Some pages of the pass book were replaced and substituted by some other pages with the intention of removing the fictitious entries made by him in the original pages. How-

ever, the newly crooked up pass book also contains one fictitious entry of Rs. 1,100 just to minimise the entries he fictitiously made in the original pass book. The initial for having checked the entry appearing against the balance after recording the fictitious credit entry of Rs. 1,100 in the pass book seems to be an artificial one though it has resemblance to the handwriting of Sri. Mathai. Sri. Chothy admitted the balance in his account on 2-4-88 only after the receipt of Rs. 4,530 in his SB account from Sri. Mathai.

Thus Sri. Mathai misappropriated the money tendered by the customer Sri. Chothy and made fictitious entries in the pass book and cheated the customer Sri. Chothy. He also replated the fictitious entries made in the pass book and substituted with new pages and crooked up the pass book in order to suit his convenience and cheated the bank and the customer.

Shri. Mathai misappropriated an amount of Rs. 2,750 entrusted to him by Shri. C. K. Kuttappan, another customer of the branch on 1-8-87 to be remitted to his SB account 234. Though Sri. Mathai entered the amount in the pass book on 1-8-87 itself the actual remittance of money to the bank was effected by him only on 18-8-87. Initial appearing in the pass book against this entry had near resemblance to the initial of Sri. Mathai. The relative voucher shows that it was prepared by Sri. Mathai. The original date of the voucher 1-8-87 was altered to 18-8-87 by Sri. Mathai to suit his convenience of remittance and accordingly remitted Rs. 2,750 in the account No. 234 of Sri. C. K. Kuttappan only on 18-8-87 with the funds received by him the proceeds of the cash cheque of Rs. 18,000 given by the customer Shri. M. V. Poulose as loan."

4. The workman filed a claim statement alleging as follows :—

While he was working as a clerk under the management with uninterrupted service, he was served with a charge memo on 3-5-88 raising baseless and flimsy allegations. He did not commit the misconduct of fraud, cheating, and breach of rules of the bank. He denied the charge. But an enquiry was held in violation of the principles of natural justice. The enquiry was arbitrary. He was not given sufficient opportunity to defend his case. The enquiry officer adopted a partisan approach. Findings of the enquiry officer are unsustainable. He did not objective by analyse the

evidence and findings are perverse. He has no employment. So he prayed reinstatement.

5. The defence taken up by the management is as follows :—

Considering the gravity of misconduct proved in the enquiry, the workman was dismissed from the service of the management with effect from 22-4-90. The charges which, I have extracted above are reiterated in the counter. Therefore there is no necessity to burden this award by repeating the charges again. The enquiry officer, Sri. N. James Augustin conducted the enquiry in full compliance with the principles of natural justice. The workman was permitted to be represented in the enquiry by Advocate Sri. S. K. Raveendran. The enquiry officer took into consideration the entire materials on record. He meticulously analysed the evidence. The disciplinary authority considered the report of the enquiry officer and his findings. So the disciplinary authority decided to dismiss the workman. He was given an opportunity to represent his case against the proposal for dismissal. He was unable to make out any fact of circumstances so as to change the proposal. Therefore the proposal was confirmed. The appellate authority confirmed the order of dismissal. The enquiry officer has act in a bonafide manner. Findings of the enquiry officer are based on materials on record. Allegations levelled against the domestic enquiry are false. It was not an empty formality. The workman does not deserve any sympathy since the misconduct committed by him are so grave that he does not deserve any leniency.

6. No oral evidence is adduced. Exts. M1 and M2 are marked on the side of management. Heard both sides.

7. The points which emerge for consideration are :—

- (1) Whether the domestic enquiry held against the workman was legal, valid proper and legally sustainable ?
- (2) Whether the findings of the enquiry officer are perverse ?
- (3) Whether any interference is called for in the matter of punishment ? If so, to what extent ?

8. Points 1 to 3.—Ext. M1 is the domestic enquiry proceedings. Ext. M2 are the remaining

part of the proceedings, particularly the documents produced in the case. It also contains the argument notes submitted by both sides, and also the enquiry report including the findings reached by the enquiry officer. A bird's eye law of Ext. M1 file will show that the enquiry officer had acted with utmost care and caution in recording the evidence before him. Stage by stage postings of the case could also be seen from the enquiry proceedings. The workman was allowed to defend his case at his request by a counsel of his choice. There is no grievance for the workman that the enquiry officer violated the principles of natural justice. A mere and bare allegation in the claim statement that the enquiry officer flouted the principles of natural justice is not sufficient. To what extent the enquiry officer violated the principles of natural justice is not convinced by him. No kind of argument is addressed by the workman as to how and in what manner the domestic enquiry is vitiated by the principles of fair play and natural justice. All the witnesses on the side of the management, MWs 1 to 11 are cross examined by the defence lawyer. The deposition of the witnesses on the side of management run nearly 240 pages. The deposition of MW1, Poulose doing contract work under a partnership firm has sworn that he took loan twice. He gave a cash cheque and he did not sign on the reverse side. He was told by the delinquent that he would sign the cheque and encash it. The cheque was issued in the night of 17-8-87. The cheque was dt. 18-8-87. The delinquent told him that the cheque need not be issued in his date. He identified the cheque before the enquiry officer with is marked as Ext. ME(111). MW1 had made endorsement on the counterfoil with regard the cheque issued to the delinquent. Entry was made in the pass book with regard to receipt of Rs. 18,000 on 10-9-87. Later it was found that the said amount was withdrawn. Similar instances are brought out from the evidence. Likewise MW3 was also misrepresented by the delinquent. He got an endorsement on the cheque. The evidence of material witnesses examined before the enquiry officer will show that serious fraud has been practised by the delinquent. He committed misconduct of cheating. All kinds misappropriation, cheating, fraud etc. are questions of fact for which sufficient evidence is let in before the enquiry officer, who is not examined before me. The enquiry officer came to his own conclusions on the basis of available evidence before him. He made a thread bare discussion of documentary and oral evidence adduced before him. It is thereafter that he reached a finding of guilt against the workman. Questions of facts are matters to be decided by competent persons like the enquiry officer. I have carefully gone through Ext. M1 file dealing with the depositions and M2 dealing with the documents and the findings of the enquiry officer. In a situation like the present one,

the duty of the Labour Court is not to sit in appeal over the decision of the enquiry officer. The court has to sit in the arm chair of a reasonable man and then the court has to put a question "What I would have done had I come across such a situation". As far as the case on hand, is concerned there is sufficient evidence to prove the guilt of the delinquent to the hilt. The Labour Court cannot reappreciate, re-analyse or reassess the evidence recorded at the time of enquiry. Applying the test which I have stated above and the well settled principles on this aspect, I have no other go but to accept the findings of the enquiry officer. I see no infirmity in the mode of recording evidence. I also see no procedural defect in the conduct of enquiry. More than sufficient opportunity is given to the workman by the enquiry officer. The workman was defended by the lawyer. Such being the position, I cannot arrive at different finding than the one reached by the enquiry officer. Such a course is impermissible. In order to divagate from the findings of the enquiry officer, there must be something on record to show that the enquiry officer violated flagrantly the principles of natural justice, fair play and commonsense. To sum up domestic enquiry was held in a valid, proper and legal manner. The findings of the enquiry officer are supported by acceptable evidence. Victims of fraud, cheating etc. have given evidence against the workman. The enquiry officer correctly and rightly dissected the evidence before him. Therefore I uphold the validity of the domestic enquiry and the findings reached by the enquiry officer.

9. Next comes the question of punishment. Bank is dealing with public money. The employees of the bank must be honest and sincere in their duties. Customers must repose confidence in them. They owe loyalty to the bank and also to the customers. Employees who act prejudicially to the interest of the bank and who cheat the bank and customers and those who defraud the bank and customers deserve no sympathy under law, equity and good conscience. The innocent employees have to be distinguished from the noncent. The employees who are guilty of fraud, cheating dishonesty and doing acts prejudicial to the interest of the bank have to be shown, as his lord-ship Justice Sukumaran observed, "the exit so that the industry may exit". The banking business must flourish. For this purpose there must be honest employees. The management has rightly and correctly imposed the extreme penalty of dismissal. The punishment imposed by the management is nothing short of what the delinquent deserves. Therefore this court has to uphold the punishment imposed on the workman. Points so found.

10. In the result, the reference is answered holding that the dismissal of the delinquent Sri.

K. M. Mathai is valid, legal justifiable and proper. Ernakulam,

14-8-1995.

VARGHESE T. ABRAHAM, Presiding Officer.
Appendix

Exhibits marked on the side of Management :

Ext. M1. Enquiry proceedings.

Ext. M2. Enquiry Report and other connected papers.

नई दिल्ली, 4 अक्टूबर, 1995

का.आ. 2827.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे, जोधपुर के प्रबन्धसत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जोधपुर, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-95 को प्राप्त हुआ था।

[संख्या एल-41011/28/86-डी-II/आईआरबीआई]
के.बी.बी. उल्ली, ईस्क अधिकारी

New Delhi, the 4th October, 1995

S.O. 2827.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publises the Award of the Industrial Tribunal, Jodhpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on the 29-9-1995.

[No. L-41011/28/86-D. II[IRBI]
K. V. B. UNNY, Desk Officer

अनुबन्ध

औद्योगिक विवाद अधिकरण एवं अम न्यायालय
जोधपुर

पीठासीन अधिकारी:—श्री महेन्द्र कुमार जैन, प्रार. एच. जे. एस.
केन्द्रीय औद्योगिक विवाद संघ्या : 2/1988

श्री किशन, लोको ड्राइवर जश्ये प्रेसीडेंट, रेल मजदूर यूनियन,
फस्ट "बी" रोड, सरदारपुरा, जोधपुर।

—प्रार्थी ।

बताम

डिवीजनल मैकेनिकल इंजीनियर (पी) उत्तर रेलवे, जोधपुर।
—प्रार्थी ।

उपस्थिति:

(1) प्रार्थी की ओर से श्री विजय मेहता प्रतिनिधि

(2) अप्रार्थी की ओर से श्री नारायणसिंह प्रतिनिधि

अधिनिर्णय

दिनांक 23-8-1995

मारत भरतार के बम प्रबंधन ने अपने प्रधिनियम क्रमांक एम-41011/28/86-डी-२ (बी) दिनांक १५ दिसंबर, 1988 के द्वारा निम्न विवाद वास्ते प्रधिनिर्णय इस न्यायालय को प्रेषित किया है :—

“क्या डी.एम.ई. (पी) के प्रबंधनतंत्र की उन्नीसे रेलवे, जोधपुर के प्रबंधनतंत्र की श्री विग्रह, लोको ड्राइवर की ६ महीने की वेतन वृद्धि रोकने का दण्ड इन की कार्यवाही न्यायोचित है? यदि नहीं तो कर्मकार किस अनुत्तरोष का तथा किस तारीख से हकदार है?”

२. प्रार्थी की ओर से आपना मांग पत्र प्रस्तुत किया गया जिसका विपक्षी की ओर से जवाब प्रस्तुत किया गया। दिनांक 21-1-1991 को जवाब मांग पत्र पेश होने पर हम प्रकरण में प्रार्थी की तरफ से शपथ पत्र व दस्तावेजात प्रस्तुत करने हेतु 10-4-1991 तारीख पेशी नियत की गई लेकिन प्रार्थी की तरफ से 10-4-91 व उसके पश्चात नियत तारीख पेशीयों 23-5-91, 21-8-91, 30-10-91, 8-1-92, 12-3-92, 14-5-92, 20-8-92, 5-11-92, 17-12-92, 31-3-93, 26-5-93, 3-9-93, 17-11-93, 13-1-94, 11-5-94, 17-8-94, 23-11-94, 22-2-95, 17-5-95, 27-7-95 व आज 23-8-1995 को मांग पत्र के समर्थन में शपथ पत्र व दस्तावेजात प्रस्तुत नहीं किये गये हैं। इस तरह इस मामले में प्रार्थी की शपथ पत्र प्रस्तुत करने हेतु 10-4-91 से आज तक 21 अक्षसर प्रदान किये जा चुके हैं लेकिन प्रार्थी की तरफ से 21 अक्षसर दिये जाने के बाबजूद भी मांग पत्र के समर्थन में शपथ पत्र व दस्तावेज प्रस्तुत नहीं किये गये तथा आज स्वयं प्रार्थी उपस्थित नहीं है तथा प्रार्थी के प्रतिनिधि ने प्रार्थी की तरफ से हिदायत पैरंगी नहीं होना जाहिर किया है। उक्त तथ्यों एवं परिस्थितियों से यह जाहिर होना है कि प्रार्थी इस प्रकरण को चलाने में हड्डुक नहीं है। अतः इस प्रकरण में नोडिस्प्यूट प्रावार्ड परित किया जाना न्यायोचित प्रतीत होता है।

अधिनिर्णय

३. प्रार्थी को मांग पत्र के समर्थन में शपथ पत्र व दस्तावेजात प्रस्तुत करने हेतु दिनांक 10-4-91 से आज तक 31 अक्षसर दिये जाने के बाबजूद भी शपथ पत्र व दस्तावेजात प्रस्तुत नहीं करने, स्वयं प्रार्थी के आज उपस्थित नहीं होने व प्रार्थी के प्रतिनिधि द्वारा प्रार्थी की तरफ से हिदायत पैरंगी नहीं होना जाहिर करने से यही जाहिर है कि प्रार्थी इस प्रकरण को आपे चलाने में सक्षम नहीं रखता है। अतः इस प्रकरण में कोई विवाद नहीं अधिनिर्णय (नोडिस्प्यूट प्रावार्ड पागित किया जाता है।

४. इस अधिनिर्णय को वार्ते मूच्चना एवं प्रकाशनार्थ भाग भरकार के अम मंदिरालय को प्रेषित किया जाता है।

५. यह अधिनिर्णय आज दिनांक 23-6-1995 को न्यायालय में हस्ताक्षर कर मुनाफा गया।

महेन्द्र कुमार जैन, न्यायाधीश

नई दिल्ली, 4 अक्टूबर, 1995

फ.आ. 2828.—शोधांशुक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अनुसरण में, केन्द्रीय नरकार एटेंट वैक आण इंडोर के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके प्रमिकारों के बीच, अनुवंश में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय नरकार औद्योगिक अधिकारण, वर्मर्इ-1 के पंचपट को प्रकाशित करनी है, जो केन्द्रीय नरकार को 29-9-95 को प्राप्त हुआ था।

[मुद्रा नं. L-12012/207/92-आई आरपी आई]
के.वी.वी.उन्नी, डैस्क अधिकारी

New Delhi, the 4th October, 1995

S.O. 2828.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bombay-1 as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Indore and their workmen, which was received by the Central Government on the 29-9-95.

[No. L-12012/207/92-IRBI]
K. V. B. UNNY, Desk Officer
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R. S. Verma, Presiding Officer
Reference No. CGIT-117 of 1993

PARTIES :

Employers in relation to the management of
State Bank of Indore.

AND

Their Workmen

APPEARANCES :

For the Management : Shri Nabar, Advocate.
For the Workmen : Shri Gadkari, Advocate.

INDUSTRY : Banking
STATE : Maharashtra

Bombay, 18th September, 1995

AWARD

The appropriate Government has referred the following dispute for adjudication to this Tribunal.

“Whether the action of the management of State Bank of Indore in terminating the services of Shri D. S. Lande vide notice dated 14-2-1990 is legal and justified? If not, to what relief the workman is entitled to?”

2. General Secretary, State Bank of Indore Employees Union Bombay has filed a written statement of claim on 11th of June, 1993. The management of State Bank of Indore has filed its reply on 9-7-93.

3. Both the parties have not chosen to lead any oral evidence through documentary evidence was led on behalf of both the sides.

4. Briefly stated the case of the workman is that Shri D. S. Lande entered services under the State Bank of Indore as a peon. He was promoted as Daftry on 9-12-1987. In the month of October, 1989 the workman was visited with certain personal problems which affected his mental state and balance. His father, who was suffering from cancer became seriously ill, his wife also became mentally ill and hence it became impossible for the workman to attend to his work. Under these circumstances he left for his native place at Khirivire (Akola) to look after his ailing father and wife. Father of D. S. Lande expired on 12-6-1990.

5. It appears that the management of the Bank wrote letters to the workman asking him to resume duties. Workman did not reply to such letters nor did he join his duties. The case of the workman is that he attended his Office on 1-12-1989 and submitted a written application to the concerned branch manager with request that he may be taken on duty and should also be sent for an examination, which was to take place shortly. In this very application he admitted that he had been absent from duty since 3-10-1989 without informing the Office because of his difficulties/problems. This application has been marked as Exhibit 'A'.

6. The case of the workman is that on the aforesaid application being submitted, the workman was paid a sum of Rs. 300 towards his travelling allowance, halting allowance and railway and other fare to enable him to take the departmental examination for the purpose of promotion to the post of record keeper/godown keeper. This examination was held at Indore on 2-12-1989 and the workman appeared at the said departmental examination.

7. It appears that the management on the basis of aforesaid absence of the workman from 3rd of October, 1989 and his alleged non resumption on duty thereafter served a notice on the last known address of the workman on 14th of February, 1990 treating the workman to have resigned from the job on the basis of such absence under clause XVI of the Bipartite Settlement. It was pleaded by the Union that notice dated 14-2-1990 could not have been given to the workman in as much as the workman had resumed his duties on 1-12-1989 and was on duty on 1-12-89 to 3-12-1989. Such a notice could have been given only if the workman would have remained absent continuously for a period of 90 days or more. Thus, the notice was premature and invalid. It was submitted that such a notice could have been given only if the workman had no present intention of joining duty. In the present case such an intention could not have been imputed to the workman because he had actually been on duty on 1-12-1989 to 3-12-1989.

8. It was submitted that since the notice dated 14-2-1990 was in English, the workman failed to understand the implications of the said notice altogether. Moreover, such a notice was required to be given in a language which the workman knew. The workman did not know English. Hence, on this ground also the notice was invalid.

9. The case of the Union is that the workman was unfairly discriminated in as much as certain other Officials remained absent for long periods but no action had been taken against them. Instances of Mrs. C. M. Vergis, Rajiya Khan, Mr. Naresh Halde and Mr. Baguwa have been cited. Upon such pleadings inter alia, it was prayed that the management of the State Bank of Indore be directed to reinstate Shri D. S. Lande with full backwages and other benefits.

10. The management of the Bank has opposed the written statement of claim and has pleaded that workman remained absent from 3rd October, 1989 and did not report on duty inspite the fact that management had sent 4 letters dt. 2-11-1983, 23-11-1989, 16-12-1989 and 20-1-1990 calling upon him to report on duty and informing him that his absence will be treated as unauthorised. The workman was also called upon to submit explanation for his long unauthorised absent. However, the workman, did not report on duty nor did he submit any explanation for unauthorised absence.

11. It was admitted that workman did attend Office on 1-12-1989 and requested for permission to appear at the written test to be held at Indore. A sum of Rs. 300 was paid to him for attending the same. The workman did appear at the said examination but thereafter did not report for duty. It is submitted that in the aforesaid circumstances, the clause XVI of the Bipartite Settlement was applicable and notice dt. 14th February, 1990 had been rightly served upon the workman. The notice was neither premature nor illegal. It was reiterated that the workman had remained continuously absent from 3rd of October, 1989 and there was an absence of more than 90 days when impugned notice had been served upon him. It was denied that the action of the management amounted to retrenchment of the workman.

12. It was denied that there was any discrimination against the workman vis-a-vis Mrs. C. M. Vergis Miss Rajiya Khan, Mr. Naresh Halde & Mr. Baguwa. Upon such pleas, it was submitted that the claim of the workman was liable to be rejected.

13. I have heard the Learned Counsel for the parties at length. The relevant clause XVI of the Bipartite Settlement dt. 17th September, 1984 which has been admittedly applied to the case of the workman by the management, reads as follows :

"Where an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consecutive days without or beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken up employment in India or the management is satisfied that he has no present intention of joining duties the management may at any time thereafter give a notice to the employee's last known address calling upon the employee to report for duty within 30 days of the notice, stating inter alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duties

and furnishing necessary evidence, where available, unless the employees reports for duty within 30 days or unless he gives an explanation for his absence satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employees will be deemed to have voluntarily retired from the Bank's service on the expiry of the said notice. In the event of employees submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the Bank's right to take any action under the law or rules of service."

14. A bare reading of the aforesaid clause make it abundantly clear that to entitle the management to proceed under this clause, there should have been a continuous absence of the employee for a period of 90 consecutive or more days. In the present case the employee initially absented himself on 3rd October, 1989. However, he appeared before the concerned manager on 1-12-1989 i.e. before expiry of 90 days from 3-10-1989 and submitted a written application exhibit 'A' whereby he requested that (1) he be taken on duty and (2) he should be sent for examination. It is admitted on both hands that on the basis of his application dt. 1-12-1989, the workman was paid a sum of Rs. 300 to enable him to appear at the said examination which was to be held at Indore. This is also an admitted position that the workman did go to Indore and did take this examination which had taken place on 2nd December at Indore. It appears that after appearing at the examination Indore, the workman did not report back on duty and again remained absent. Meanwhile, certain letters came to be written to him and eventually the impugned notice dt. 14-2-90 came to be issued to him.

15. From the above narration, it is crystal clear that the workman reported on duty on 1-12-1989 and was granted advance of Rs. 300 to enable him to take their departmental examination and he, thereafter went to Indore to take the examination. There was thus a hiatus or a break in the continued absence and a fresh continuous absence for 90 consecutive days or more, alone could furnish a ground to the employer to resort to provisions of clause XVI extracted above. On this premises, for computation of a continuous absence of 90 consecutive days or more, the correct date would be 4-12-1989 and not 3rd October, 1989. Once the workman remained on duty for the period 1-12-1989 to 3-12-1989, even though for appearing at a departmental examination, it could not be said that it was a continued absence from 3-10-1989. A fresh spell of absence occurred when the workman did not report back on duty after taking the departmental examination. Thus, the management had to show that on the date the impugned notice was given, the workman had remained continuously absent for 90 consecutive days or more. Computed on this basis, 90 days would be over on 3-3-1990. But the impugned notice had been given on 14-2-1990 i.e. much before the expiry of the period of 90 days of continuous absence.

16. Thus the Learned Counsel for the workman is right, when he contends that the notice served on the

workman under the provisions of clause XVI is premature and invalid. Learned Counsel for the employer tried to suggest that period spent on taking examination was not a period spent on duty. But, this contention is devoid of merit and cannot be countenanced. It is to be recalled that it was a departmental examination, which the workman was required to take for further promotion. Not only this, the workman was paid an advance to enable him to travel to the place of examination as per Shastri Award. If this were not to be counted as a period spent on duty, there would have been no occasion for the Bank to make an advance of Rs. 300 to the workman. I am, therefore, of the view that contention on this aspect of the case, on behalf of the management deserves to be stated only for the sake of rejection and it need not detain me further even for a moment.

17. Now, I may deal with another aspect pertaining to legality of the impugned notice. Para 519 of the Shastri Award reads as follows :

"Issue of Notices and orders—Notices which are required to be given shall be served individually on the employees affected and their acknowledgements taken, and shall also be exhibited on the notice boards of the Bank at the Offices or establishments concerned. Such notices as are so exhibited shall be in English and also in the principal language of the district or locality in which each such Office or establishment is situated. Any notice, order chargesheet, communication or intimation which is meant for an individual employee shall be in a language understood by the employee concerned. In the case of an absent employee notice shall be sent to him by registered post, which acknowledgement due." (emphasis supplied by me)

A bare reading of this paragraph goes to show that any notice, order, chargesheet, communication or intimation which is meant for an individual employee shall be in a language understood by the employee concerned. Admittedly the notice to the workman was not given in the language understood by him. The notice was admittedly in English. In para six of the written statement of the claim it was specifically stated :

"The letter dated 14-2-1990 written in English language which was not understood by him and he completely failed to understand the implications of the said letter under reference."

In its reply the management did not deny the aforesaid assertions but went on to take pleas which were not relevant to this plea. I may quote reply to para six of the written statement of the claim, which is contained in para XVI of the reply of the management :

"With reference to paragraph 6 of the Statement of Claim under reference, it is submitted that the contents thereof prove beyond doubt that the workman concerned was not interested in the job. Had it been so, he would have attended his duties without

waiting for the letter from the First Party, as he did visit the Bank for appearing for examination. It is pertinent to note that the receipt of the letters from the First Party calling upon the workman to resume duty and submit the explanation for his absence has not been denied and still he did not report for duty. It is therefore, denied that the workman was waiting for a letter from the Bank".

The management has not claimed that the workman knew English language and therefore, he did understand the implications of the notice dt. 14-2-90. Thus, the notice violated the specific provisions of aforesaid paragraph of Shastri Award and this also renders the notice invalid in the particular circumstances of the case.

18. On behalf of the management it has been suggested that from November, 1988 to March, 1990 the workman remained absent for 294 days on various occasions and always without intimation or prior permission or sanction. May be it is so but that at best could render the workman amenable to the disciplinary jurisdiction of the management. For purpose of para XVI of the Bipartite Settlement, it was obligatory on the management to serve a notice on the workman after 90 days of continuous absence and only such a notice could result in application of the deemed provision regarding cessation of the service of the workman.

19. One more contention was raised on behalf of the management that the workman had been filing false certificates regarding his illness. May be it is so but this again could have been subject matter of a proper disciplinary inquiry and could not be a substitute for a valid notice as required by Chapter XVI of the Bipartite Settlement.

20. I, therefore, find that the services of the Petitioner could not have been determined vide notice dt. 14-2-1990. The deemed fiction regarding cessation of service by continued absence of 90 days could not be invoked in the present case.

21. A plea regarding hostile discrimination was taken on behalf of the workman but in view of my findings on the invalidity of the notice dt. 14-2-1990 I need not enter the question of alleged hostile discriminatory treatment. I, therefore, refrain from entering into the said question.

22. From what I have stated above, it is held that the action of the management of State Bank of Indore in terminating the services of Shri D. S. Lande vide notice dt. 14-2-1990 is neither legal nor justified and he is entitled to be reinstated with consequential benefits.

23. I may clarify that in case any absence on part of the workman amounts to misconduct under relevant regulations, the management shall be free to take action against him in accordance with law.

24. Award is made accordingly.

R. S. VERMA, Presiding Officer

नई दिल्ली, 4 अक्टूबर, 1995

का.आ. 2829.—आंदोलिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबंध में नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आंदोलिक विवाद में आंदोलिक अधिकरण, जोधपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-95 को प्राप्त हआ था।

[संख्या ए.ल-41012/44/86-डी/II/आई आर बी आई]
के.वी.बी.उमी, डैस्ट्रिक्ट अधिकारी

New Delhi, the 4th October, 1995

S.O. 2829.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jodhpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of N. Rly. and their workman, which was received by the Central Government on the 29-9-95.

[No. L-41012/44/86-D-II/IRBI]
K. V. B. UNNY, Desk Officer

अनुबंध
आंदोलिक विवाद अधिकरण एवं अम न्यायालय
जोधपुर

पीठासीन अधिकारी :—श्री महेन्द्र कुमार जैन, शार एच जे एस
केन्द्रीय आंदोलिक विवाद संघ्या : 1/1982

श्री किशन, द्राइवर "सी" जरिये प्रेसीडेंट रेलवे मजदूर मूलियन
1वी, रोड, सरदारपुरा, जोधपुर।

—प्रार्थी।

वनाम

मैकेनिकल इंजीनियर (पी) उत्तर रेलवे, जोधपुर।
—प्रप्रार्थी।

उपस्थिति :

- (1) प्रार्थी की ओर से श्री विजय मेहता प्रतिनिधि।
- (2) प्रप्रार्थी की ओर से श्री नारायणसिंह प्रतिनिधि
अधिनियम

दिनांक 23-8-1995

भारत सरकार के अम मंत्रालय ने अपनी अधिसूचना अमांक ए.ल 41012/44/86-डी-2(बी) दिनांक 10-5-1988 के द्वारा निम्न विवाद वास्ते अधिनियम इस न्यायालय को प्रेपित किया है :—

“क्या जोधपुर डिवीजन के रेलवे प्रणालन की किशन द्राइवर “सी” की, डिवीजन मैकेनिकल इंजीनियर (पी) उत्तर रेलवे, जोधपुर के दिनांक 3-4-1982 के आदेश सं. एम जी 27-ए-1/7/81 द्वारा तीन वर्ष तक वेनन वृद्धि रोकने का दण्ड हेते की कार्यवाही न्यायोचित है यदि नहों, तो मंबद्धित कर्मकार किस अनुतोष का हकदार है ?”

2. प्रार्थी की ओर से अपना स्टेटमेंट आंफ कर्म पेश किया गया जिसका जबाब विधिकी की ओर में दिनांक 21-1-91 को पेश किया गया तथा इस प्रकरण में प्रार्थी की तरफ से शपथ पत्र प्रस्तुत करने हेतु 10-4-1991 तारीख पेशी नियत की गई, लेकिन प्रार्थी की तरफ से 10-4-91 व उसके पश्चात नियत तारीख पेशीयों 23-5-91, 21-8-91, 30-10-91, 8-1-92, 12-3-92, 14-5-92, 20-8-92, 5-11-92, 17-12-92, 31-3-93, 26-5-93, 3-9-93, 17-11-93, 13-1-94, 11-5-94, 17-8-94, 23-11-94, 22-2-95, 17-5-95, 27-7-95 थ आज दिनांक 23-8-95 को मांग पत्र के समर्थन में शपथ पत्र या दस्तावेजात प्रस्तुत नहीं किये गये हैं। इस तरह इस मामले में प्रार्थी को शपथ पत्र प्रस्तुत करने हेतु 10-4-91 से आज तक 21 अवसर प्रदान किये जा चुके हैं, लेकिन प्रार्थी की तरफ से 21 अवसर दिये जाने के बावजूद भी मांग पत्र के समर्थन में शपथ-पत्र या दस्तावेजात प्रस्तुत नहीं किये गये तथा आज श्वयं प्रार्थी उपस्थित नहीं है तथा प्रार्थी, के प्रतिनिधि ने प्रार्थी की तरफ से हिदायत पैरवी नहीं होना जाहिर किया है। इसके नियोगी एवं परिमितियों से यह जाहिर होता है कि प्रार्थी इस प्रकरण को आगे चलाने में रुचि नहीं रखता है। अतः इस प्रकरण में नोडिस्प्युट एवां न्यायालय पारित किया जाना न्यायोचित प्रतीत होता है।

अधिनिर्णय

3. प्रार्थी को मांग पत्र के समर्थन में शपथ-पत्र व दस्तावेजात प्रस्तुत करने हेतु दिनांक 10-4-1991 से आज तक 21 अवसर दिये जाने के बावजूद भी शपथ-पत्र व दस्तावेज प्रस्तुत नहीं करने, स्वयं प्रार्थी के आज उपस्थित नहीं होने व प्रार्थी के प्रतिनिधि द्वारा प्रार्थी की तरफ से हिदायत पैरवी नहीं होना जाहिर करने से यही जाहिर है कि प्रार्थी इस प्रकरण को आगे चलाने में रुचि नहीं रखता है। अतः इस प्रकरण में कोई विवाद नहीं अधिनिर्णय (नोडिस्प्युट एवां)

पारित किया जाता है।

4. इस अधिनिर्णय को वास्ते सूचना एवं प्रकाशनार्थ भारत सरकार के श्रम मंत्रालय को प्रेपित किया जावे।

5. यह अधिनिर्णय आज दिनांक 23-8-1995 को खुले न्यायालय में हस्ताक्षर कर मुभाया गया।

महेन्द्र कुमार जैन, न्यायार्थी

नई दिल्ली, 4 अक्टूबर, 1995

का.आ. 2830.—आधिकारिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमति में, केन्द्रीय सरकार साउथरन रेलवे के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अविकरण मद्दास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-95 को प्राप्त हुआ था।

[मंडपा एन-41012/72/92-आईआर (डी.गृ.)]
के० दी० वी० उमी० डैस्क अधिकारी

New Delhi, the 4th October, 1995

S.O. 2830.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Southern Rly, and their workman, which was received by the Central Government on the 20-9-1995.

I No. L-41012/72/92-IR (D.U.)

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL.

TAMIL NADU

MADRAS

Thursday, the 31st day of August, 1995

PRESENT :

THIRU N. SUBRAMANIAM, B.A.B.L.,
INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 195/1993

(In matter of the dispute for adjudication under Section 10(1) (d) of the Industrial Disputes Act, 1947, between the Workman and the Management of Southern Railway, Madras).

BETWEEN

Shri J. Daniel, No. 17,
3rd Street, Ekangipuram,
Parambur, Madras-600 023.

AND

The General Manager,
Southern Railway,
Madras-600 003.

REFERENCE :

Order No. L-41012/72/92-IR (D.U.), dated 12-11-92, Ministry of Labour, Govt. of India, New Delhi.

This dispute coming on for final hearing on Wednesday, the 23rd day of August, 1995 upon perusing the reference, claim statement and all other material papers on record and upon hearing the arguments of Thiru S. Periasamy, Advocate appearing for the Workman and the Management being absent and set ex parte, and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This reference has been made for adjudication of the following issue :

“Whether the action of the Management of Southern Railway is justified in removing Shri J. Daniel, Khalasi from service w.e.f. 13-5-88 ? If not, to what relief is the workman concerned entitled ?”

2. The case of the petitioner-workman is as follows :

He was employed as a Khalasi in the Carriage and Wagon Works Dept., at Parambur. He joined duty as a temporary Khalasi on 10-9-79. Later his services were regularised and he was made permanent w.e.f. 11-9-80. Due to the sudden demise of his uncle and his father, he became mentally sick w.e.f. 25-6-86. Hence he could not attend the work. He took medical treatment in the Institute of Mental Health, at Kilpauk. He produced Medical Fitness Certificate from the doctor to the Chief Works Manager, Carriage and Wagon Works Department, Parambur. He accepted the medical certificate and allowed him to join duty at the paint shop. He worked there continuously till 13-5-86. A charge sheet was issued on 13-12-87 calling for explanation for his absence without leave from 26-5-85 to 3-6-87. The petitioner submitted his explanation. The Chief Works Manager conducted an enquiry on 6-4-88. The Enquiry Officer submitted a perverse finding. He did not consider the medical certificate given by the petitioner. The enquiry was conducted in violation of principles of natural justice. Enquiry Officer never applied his mind to the evidence given during the enquiry. The petitioner was absent from duty on account of his mental sickness only for 370 days and not for 730 days as alleged. On the basis of the Enquiry Officer's report the petitioner was terminated from service w.e.f. 13-5-88 without giving second show cause notice. Under the Standing Orders the petitioner is entitled to Second Show Cause Notice. Against his back records of service was not at all taken into consideration. The dismissal order is in violation of principles of natural justice. He is entitled to reinstatement with back wages, continuity of service, and other attendant benefits. The petitioner filed a mercy petition to the respondent which was rejected on 16-6-89. He is not guilty of any misconduct. He was compelled to take medical treatment for his mental sickness. The petitioner is a sincere, loyal workman. In his past 9 years of service, he has not been guilty of any misconduct. Hence dispute has been raised.

3. The respondent remained ex parte.

4. The point for consideration for whether the action of the Management of Southern Railways justified in removing the petitioner from service w.e.f. 13-5-88 ? If not to what relief is the concerned workman entitled to ?

5. The Petitioner examined himself as WW1 and marked exhibits W-1 to W-3. According to him he was mentally sick and he was taking treatment, in Kilpauk Mental Hospital. Thereafter he produced Medical Fitness Certificate from the concerned doctor. The Chief Works Manager, Carriage and Wagon Works accepted the fitness certificate and allowed him to join duty at the paint shop. He continuously worked there till 13-5-88. In the meanwhile a charge sheet was issued on 12-12-87 alleging that petitioner was absent from duty from 26-5-85 to 25-6-86. The petitioner submitted his explanation and the domestic enquiry was conducted. According to him, the Enquiry Officer did not consider the Medical Fitness Certificate produced by the petitioner and accepted by the Chief Works Manager. Further it is alleged after the finding of the Enquiry

Officer a second show cause notice intimating the proposed punishment was not given to him. Further his back records of service was not at all considered in imposing the punishment. For the evidence of the petitioner WW1, there is no contra evidence from the side of the respondent. So, the evidence of WW1 and exhibits marked No. W-1 to W-3 clearly establish that the domestic enquiry conducted is not fair and proper following the Standing Orders of the respondents. Further the findings of the enquiry officer without considering the medical fitness certificate produced by the petitioner is perverse. Therefore, the claim of the petitioner is proved.

In the result, an award is passed directing the respondent to reinstate the petitioner in service with continuity of service and back wages and all other attendant benefits. No costs.

Dated, this the 31st day of August, 1995.

THIRU N. SUBRAMANIAN, Industrial Tribunal

WITNESSES EXAMINED

For Workman :

W.W. 1 : Thiru J. Daniel,

For Management : None

DOCUMENTS MARKED

For Workman :

Ex. W-1/3-10-91 : Copy of 2-A Petition filed by the workman before the Commissioner of Labour (Central).

W-2/6-3-92 : Communication from the Assistant Labour Commissioner (Central), Madras to the workman, requesting to offer his Counter comments in the Management's comment dt. 24-2-92.

W-3/10-3-92 : Communication from the Assistant Labour Commissioner (Central), Madras to the Management directing to submit Counter statement/Comments on the dispute.

For Management : Nil.

नई दिल्ली, 4 अक्टूबर, 1995

का. आ. 2831 :—ग्रौचोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नार्थ इस्टन रेलवे के प्रबन्धतान्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुवंश में निर्दिष्ट ग्रौचोगिक विवाद में केन्द्रीय सरकार ग्रौचोगिक अधिकरण, धनबाद-1 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29 सितम्बर, 1995 को प्राप्त हुआ था।

New Delhi, the 4th October, 1995

S.O. 2831.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Dhanbad-I as shown in the Annexure, in the industrial dispute between the employers in relation to the management of N.E. Rly and their workmen, which was received by the Central Government on the 29-9-1995.

[No. L-41012/20/92-I.R(DU)]
K. V.B. UNNY, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD
In the matter of a reference under Section 10(1)(d)
of the Industrial Disputes Act, 1947

Reference No. 83 of 1993

PARTIES :

Employers in relation to the management of
North-Eastern Railway, Samastipur
AND

Their Workmen

PRESENT :

Shri P. K. Sinha, Presiding Officer

APPEARANCES :

For the Employers.—Shri S. N. Dutta, Advocate.

For the Workmen.—Shri D. Mukherjee, Advocate.

STATE : Bihar INDUSTRY : Railway
Dated. the 14th September, 1995

AWARD

By Order No. L-41012/20/92-I.R. (D.U.) dated 23-3-1993 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of D.R.M., N.E. Railway Samastipur, in denying Shri Shambhu Prasad Saha to take him back on employment with full back wages as also depriving him of the chance for approaching in screening test is justified? If not, what relief he is entitled to?”

2. The concerned workman, on notice, appeared and filed written statement stating therein that he had been working at Sonebarsha Kacheri Station, in Traffic Department, N.E. Railway continuously since 9-4-78 in a permanent post, with unblemished record. But the management stopped him from service with effect from 19-1-1982 without assigning any reason, violating the Principles of natural justice though the workman had rendered more than 240 days of service in a calendar year, whereas during his afore-

said period of service he was in attendance for 509 days in all. It has been claimed that the management, therefore, had violated provisions of Section 25-F of the Industrial Disputes Act. It has been claimed that the representation of the workman against the termination of service did not fetch any result. Thereafter the workman raised industrial dispute on 23-4-1991, challenging illegal termination. But the management did not attend the conciliation proceeding. Thereafter this reference was made.

3. It has been claimed that the action of the management in not allowing the workman to appear for the screening test also was unjustified. The workman has prayed for reinstatement into service with full back wages.

4. The management also appeared and filed its written statement in which, besides technical objections, it was averred that the Railways had to spend 55 per cent of its expenses in payment of salaries of the staff since the Railways were over staffed and were surrendering surplus manpower. It has been submitted that previously there was no requirement of any unskilled labour and khalasi in the service of the Railway.

5. It has been claimed that when the dispute was raised, the Employer had filed its reply before the Regional Labour Commissioner (Central), Patna, enumerating the merits of the case of the employer.

6. It has been claimed that the concerned workman was never under the employment of the Railway. It has also been claimed in para 12 of the written statement that the workman concerned had not put in continuous attendance for 180 days in a calendar year so as to enable him to the grant of time scale.

7. But in para 13 of the written statement the management has averred that it was not disputed that the workman was in the employment during different periods, as would also be evident from the application dated 22-4-1991 filed by the workman before the Regional Labour Commissioner (Central), Patna. It has also been submitted here that the workman had never worked after January, 1982.

8. In para 16 it has been admitted that the services of the concerned workman were utilised for a short period on casual basis. The management has not accepted that the workman had worked for more than 240 days in a calendar year, denying that the case fell within the mischief of Section 25-F of the Industrial Disputes Act, 1947.

9. In para 20 of the written statement the management has hinted about wrong mention of date of birth of the concerned workman. It has been stated that the workman had done forgery like others workmen such as at the time of so called joining the workman given his transfer certificate indicating his date of birth 1-1-1963, which is under age and hence there is no such provision in Railway

rules that an under-age employee is entitled to perform his duty such a fashion."

The above passage I have re-produced from the written statement of the management which apparently means, despite wrong English used therein, that the school leaving certificate filed by the workman at the time of his joining showed that he was not a major on that date. It may be mentioned here, however, that the management has adduced no evidence, oral or documentary, on this point, but this averment admits that at the time of his engagement by the Railways he had filed some school leaving certificate, thereby admitting that the workman had joined the service though it has been claimed by the management elsewhere that he was a casual worker for some time only.

10. The management further has mentioned in its written statement that the workman was not fit for screening since he had worked as casual worker on daily wages. The management has prayed that the claim of the workman be rejected.

11. The workman thereafter filed rejoinder to the written statement of the management denying its allegations.

12. It will appear from the record that despite opportunity given, the management failed to produce any witness. When on 25-8-1995 the management did not adduce evidence, the learned Counsel for the Railways submitted that he wanted to examine one witness for proving some documents filed on behalf of the management and if those documents are admitted into evidence, he was prepared to argue on the basis of that. It appears that Sri D. Mukherjee representing the other side, agreed to waive formal proof of the management's documents provided the management also agreed to have his document similarly marked as exhibit which was on the record but was not marked exhibit earlier. Thereafter both sides agreed to have those documents marked exhibits by waiving the formal proof which was so ordered. This way the management has placed on the record the documentary evidence, without examining any witness whereas the concerned workman has examined himself as a witness and has proved certain documents.

13. The points for consideration are as follows :

- (i) whether the management had violated the provisions of Section 25-F of the Industrial Disputes Act when it stopped the concerned workman from working ?
- (ii) if the management had violated the provisions of Section 25-F of the Industrial Disputes Act, then whether the workman is entitled to any relief and, if so, to what relief ?

14. I will first take up the question as to whether the management by the alleged stopping of the work of the concerned workman had done so by violating the mandatory provision of Section 25-F of the Industrial Disputes Act. For this I will first discuss as

to whether the concerned workman has proved that he had performed duty for at least 240 days under 12 calendar months.

15. According to the claim of the concerned workman he had worked under the management from 9-4-1978 to 19-1-1982. It has been claimed that during this period he had worked for a total of 509 days. This is the claim in the written statement also.

16. In reply, the management in its written statement has claimed in para 12 that the concerned workman was never in employment under the Railways, hence there was no question of paying him "terminal gratuity" but, surprisingly, in para 16 of the same written statement the management has claimed that the service of the workman was utilised for a short period on casual basis. These two statements of the management are obviously contradictory. In para 16 the management has admitted that the concerned workman was employed though claiming that the employment was for a short period only. Of course the management has denied that the workman had worked for more than 240 days in a calendar year.

17. The concerned workman, Shambhu Prasad Saha, in his evidence has claimed that he had joined work at Sonbarsa Kacheri Station on 9-4-1978 having been appointed by the Station Master and had been working there continuously till 18-1-1982 after which he was stopped from work. He has also claimed that he was working under the instruction of the Station Master who supervised his work as well he was paid his wages by the Cashier of the Railway. He has claimed that the management, before stopping him from work, had neither served him with any notice nor had paid him any compensation.

18. During cross-examination this witness maintained that his attendance was recorded in a register. He also admitted that the management used to interrupt his working for a few days after which he again was put back to work. He submitted that he was not paid wages for those intervening idle periods. He also claimed that he was stopped from working for 7 or 8 days, but not every month. He has denied that 1-1-1963 was his date of birth. He has claimed that he was 18 years old when he had joined service. In cross-examination, after this witness had claimed that he had worked against the permanent post, a suggestion was thrown to him that he had worked in the Railway only on casual basis which suggestion, of course, the witness denied. But this suggestion again shows that the workman had been working there at least on casual basis.

19. The workman has proved photo copy of a chart showing the number of his working days from 9-4-1978 upto 18-1-1982, duly signed by the Station Master. The same copy has also been filed and relied upon by the management which is Ext. M-2. The only difference is that in Ext. M-2 certain comments have also been given but it has not been proved as to who had written the comments in the chart.

20. The management has also relied upon a letter dated 8-5-1992 (Ext. M-1) issued by one Alok Kumar, A.P.O. (II) of the office of Divisional Railway

Manager (P) at Samastipur. This letter is on this very subject and is addressed to the S.P.O. (PC) at Gorakhpur in N.E. Railway. This was in reply to a letter received from the addressee which had mentioned filing of application dated 22-4-1991 by the concerned workman before the R.L.C.(C). This letter admits that on examination of the subject it was marked as casual labour|substitute during casualities to work as casual labour|substitute at Sonbarsa Kacheri Station from August 1980 to January, 1982 against different casualties of Group 'D' staff. This letter also informs that the records could not show as to what was the reason for not utilising services of the concerned workman after January, 1982. This also claims that Shambhu Prasad Saha was not given any employment nor his services were terminated. It has been clearly admitted that the concerned workman was marked as casual labour|substitute during casualties from time to time till January, 1982. It has also been mentioned in this letter that calling Shambhu Prasad Saha back to duty was not possible because there was complete ban on engagement of casual labour|substitute, imposed by the Railway Board.

21. On the other hand, Ext. W-2 is photo copy of the certificate given by the Station Master of Sonebarsa Kacheri Station certifying that the concerned workman had worked at that Station from 9-4-78 upto 18-1-1982 as casual worker in the post of L/C Porter, Waterman, Safaiwala, Watchman etc. The Station Master also certified that he was a laborious worker as well honest and loyal.

22. Therefore from the admission of the management itself it would appear that during the year from 9-4-78 to 18-1-82 this concerned workman was employed atleast on casual basis. This chart in Ex. W-1—Ext. M-2 would show that he was engaged at the Station either to work as Safaiwala or as L/C Porter. It is now well established that the provision of Sec. 25-F of the Industrial Disputes Act would apply even to a casual worker. If one is employed by the management even on casual basis, the relationship of employer and employee is established.

23. Now I will take up the question as to whether within any 12 calendar months the workman can be said to have worked for 240 days, or more. Admittedly this concerned workman did not work after January, 1982. Therefore, for coming to a just decision I will take up the period of 12 calendar months which immediately preceded January, 1982, i.e., the period from 1-1-81 to 31-12-81. It will appear from Ext. W-1 as well Ext. M-2 that during this period, as certified by the concerned Station Master, the workman had worked for 215 days. But if one takes into account the notations made in the last para in Ext. M-2, it would appear that during that period the concerned workman had worked for 209 days.

24. Sri D. Mukherjee, appearing for the concerned workman has relied upon a decision of Hon'ble Supreme Court reported in 1985 Lab. L.C. 1733 (H. D. Singh Vs. Reserve Bank of India and others). While taking into account the number of days worked by the concerned workman in that case, the Hon'ble Supreme Court noted that according to the workman he had worked for 202 days from July, 1975 to July,

1976. The workmen also contended that when 52 Sundays and 17 holidays were added to the period of aforesaid 202 days the total would come to 271 days. Accepting this contention in the absence of any evidence to the contrary, their Lordships drew the inference that the appellant's claim that he had worked for 240 days during that period was true.

25. Sri Mukherjee has submitted that according to own reckoning of the management in Ext. M-2 the workman had worked atleast 209 days within 12 calendar months immediately preceding the month in which he was stopped from duty.

26. The chart in Ext. M-2 does not show as to for how many days the workman had worked on Sundays and on other holidays during that period. But even a casual worker is entitled to his weekly off day and if he had worked during a holiday, that period also could be added, separately to his total working days. It is well accepted norm that any worker working on a holiday would either get overtime allowance or compensatory leave. Therefore, if to this period of 209 days the Sundays and holidays during those 12 months are added then the period of total working days within 12 calendar months would exceed 240 days.

27. Here I may again refer to para 12 of the written statement of the management in which it was asserted that since the workman had not put in continuous 180 days of attendance in a calendar year, he was not entitled to the grant of time scale. When asked to clarify this statement both sides submitted that a worker working for 180 days in a calendar year continuously would become entitled to the time scale. Definitely the concerned workman, in the year 1981, had worked for more than 180 days and had become entitled even to the time scale.

28. From the chart in Ext. M-2 it would appear that excepting the month of March, the concerned workman had worked every month. From August to December, 1981 the concerned worker had worked every month for the periods of 31, 30, 31, 30 and 19 days, respectively. This will show that though in some months he had worked for lesser days, but many a times he was engaged for considerable period, even if the endorsements in the last column of Ext. M-2 are taken into account.

29. In the result I find that the workman, in the calendar year of 1981, had worked for more than 240 days.

30. Taking another point of view also I find that the natural justice demands that the workman should be taken to have worked for more than 240 days during the year 1981. Ext. M-2 shows, on which the management has relied, that this workman was working either as Safaiwala or as L/C Porter. As a matter of fact it was only in the year 1981 that he has been shown to have worked also as L/C Porter. For rest of the period he had worked as Safaiwala. Both the jobs obviously are of permanent nature and the management was not legally justified in taking the work from the concerned workman by engaging him from time to time for a considerable period, even if the

claim of the management is accepted. In such case the period of temporary idleness cannot be excluded in counting the days of work.

31. Taking another view, Ext. M-1 shows that the concerned workman was employed from time to time as casual labour substitute. If he was working as substitute that would amount to his working, what is known to be, as a 'badli worker'. The Fifth Schedule to the Industrial Disputes Act catalogues the unfair labour practices. Under Sl. No. 10 of this Schedule, to employ workmen as 'badli', casual or temporary and to continue them as such for years, with the object to deprive them of the status and privileges of a permanent workman, is also one of the unfair labour practices.

32. Obviously from 9-4-78 upto 18-1-82, for a period of more than three and half years, the management had continued employing this workman either as casual labour or as substitute though the works entrusted to him were of permanent and perennial nature. In this view also stopping the workman from work was unjustified. Even the workman has stated in his evidence that he was stopped from work with effect from 19-1-82, and there is nothing on the record to show that it was not the management which had stopped him from work. In view of this his retrenchment cannot be held to be justified. Moreover, having worked for more than 240 days within 12 calendar months, as aforesaid, the management was bound to observe the provisions of Sec. 25-F of the Industrial Disputes Act before retrenching him because such stopping of work would squarely amount to retrenchment.

33. Admittedly the management did not comply with the provisions of Sec. 25-F of the Industrial Disputes Act, hence the retrenchment of the workman with effect from 19-1-82 was illegal.

34. Taking point No. 2, the general practice, in case of a retrenchment without observing the provisions of Sec. 25-F of the Industrial Disputes Act, is that the workman has to be ordered to be reinstated, with full back wages.

35. So for this case is concerned I have no doubt that the workman is entitled to reinstatement but some points may be discussed before including in the Award the amount of back wages payable to the workman.

36. There is no doubt that the concerned workman, after his retrenchment, had waited for 14 years before raising the dispute. It can be argued that in such case the dispute has become stale to be granted any relief. Meeting this point Sri Mukherjee submitted that the workman had satisfactorily explained his delay in his evidence by stating that he had represented against the stoppage of work at which the management assured him that he would be informed later about his work. The learned Counsel pointed out that, as per evidence of workman, similar assurances were given every time he had approached the management for service, but the management never obliged. In cross-examination, this assertion of the workman has not been challenged. Therefore

there is nothing on the record to disbelieve this piece of evidence. Sri Mukherjee submitted that after his retrenchment, as his evidence goes, the workman several times had approached the management and at no time the management had told him that he would not be taken back but continued assuring him that he would be informed about his work later. Therefore, this statement of the witness cannot be brushed aside, in face of no opposition, that from time to time he was assured by the authorities that they would send him information for joining the work.

37. It is true that the stale claims should not be encouraged unless satisfactory explanation for delay has been given. I have already stated that the workman in his evidence had given explanation for the delay which has remained unchallenged by the management. Therefore, this explanation has to be considered in favour of the workman.

38. Moreover, a case of retrenchment without observing the formalities enunciated under Sec. 25-F of the Act has to be distinguished from other claims. If the provisions of Sec. 25-F of the Industrial Disputes Act were not complied with before retrenching a workman, the retrenchment would automatically become illegal and not enforceable. Therefore, the order of retrenchment, written or oral, technically is non-existent if that order apparently is unenforceable. If that order is legally inoperative then it would amount as if no such order was passed. In such circumstance the retrenchment being illegal, the workman has to be treated as continuing in service. Therefore, if a workman delays in raising the dispute, he may suffer economically, but for that delay in such a case of retrenchment his case may not be thrown out of window.

39. The learned lawyer for the workman has relied upon a decision reported in 1991 Lab. I.C. 633 of the Hon'ble Patna High Court (Between Padam Chandra Jain and another Vs. The Chairman, Industrial Tribunal-II, Central, Dhanbad and others). In that order the Hon'ble High Court had decided two writ application in both of which the claim of the workman had been rejected as being 'ostensible'. But in both the cases the Tribunal had found that the workmen had been retrenched without compliance of the provisions of Sec. 25-F of the Industrial Disputes Act. In one of the cases the industrial dispute was raised after about 14 years which delay, the Tribunal had found, was not explained. In course of hearing, the decision reported in AIR 1976 SC-1111 (Between State Bank of India Vs. N. Sundarmoni) was relied upon on behalf of the petitioner and it was argued that in a case of illegal termination of service, the order of reinstatement was the only relief which could be granted. The petitioner also had relied upon an unreported decision of Hon'ble Supreme Court dated 1-9-1986 in Civil Appeal No. 3335 Vs. State Bank of India and also upon another such unreported decision. His Lordship of Hon'ble Patna High Court had also discussed, in the aforesaid decision, another judgement of the Hon'ble Supreme Court reported in AIR 1959 SC 1217 (M.S. Shalimar Works Ltd. vs. Their Workmen) as also the judgement in the case of Inder Singh & Sons Ltd. Vs. Their Workmen [1961 (II) LLJ. 89].

40. In para 7 of the decision of the Hon'ble Patna High Court it was held that the termination of services of the petitioners were wholly illegal. His Lordship also held that there was no absolute proposition of law that in no case relief could be granted merely because there was delay in raising the industrial dispute. His Lordship observed that such delay, however, had a strong bearing on the back wages payable by the employer in the event an order of reinstatement was passed for the reason that the employer could not be made to suffer for the delay in raising the demand giving rise to the industrial dispute.

41. Therefore, I find that in a case of this nature in which it is held that retrenchment was illegal ab initio because of non-compliance of the legal provisions, the workman has to be granted the relief of reinstatement. If he had delayed in raising the dispute, he did so at his own peril so far back wages is concerned.

42. I have already come to the conclusion that the workman was retrenched without complying with the provision of Sec. 25-F of the Industrial Disputes Act which meant that the retrenchment was illegal. This is particularly so when, at the own submission of the management in para 12 of its written statement, the concerned workman had become entitled to the grant of time scale, having worked for more than 180 days in one calendar year. But, as claimed, the concerned workman had been approaching the management time and again for his service and for that reason he had delayed in raising the dispute. But he was entitled to raise the dispute immediately on his retrenchment which he did not do. Admittedly he raised the dispute on 23-4-91 on the basis of which ultimately this reference was made which was received in this office on 19-4-93. Therefore, there was some delay on the part of the Government also in referring the dispute which it did by order dated 23-3-93, whereas the dispute was raised in April, 1991 itself. For these delays the management cannot be held responsible, hence should not be asked to pay back wages for this period. However, the workman would be entitled to full back wages from the date of receipt of the order of reference in this Tribunal, i.e., with effect from 19-4-1993.

43. In so far as the allegation of depriving the concerned workman of the chance of appearing in the screening test is concerned, Ex. W-2 is the application of the concerned workman dated 30-1-82 addressed to the D.R.M. (P) N.E. Rly., in which the workman had stated that he had completed 509 days of working out of which 122 days was continuous. He had made a prayer to call him to appear in the screening test for a permanent post in Class-IV category. It is with regard to this application that the management has claimed that according to own volition of the concerned workman, he had worked only for 122 days continuously. But ignorance on the part of the workman in calculating the days of his work should not be made instrumental in depriving him of the benefit to which he had become entitled. Para 12 of the written statement of the management speaks of 180 days of continuous working in one calendar year. If expression "continuous" was to mean continuity on day to day basis, then there was no

use to seek that continuity within a period of one year. That has to be read to be meaning that if a workman had worked for 180 days in one calendar year, that would be deemed to be continuous work for 180 days. I already have held that the workman had worked, within 12 calendar months, for a period more than 240 days. Therefore, the action of the management in depriving the concerned workman to appear for the screening test also has to be held to be unjustified.

44. Findings above make the following award.—The retrenchment of the concerned workman, Shambhu Prasad Saha, having been found to be illegal because of non-compliance of the provisions of Sec. 25-F of the Industrial Disputes Act, 1947, the action of the management in denying Shambhu Prasad Saha to take him back, or to continue him in employment was unjustified. The action of the management in depriving him to appear for the screening test was also unjustified. The management is directed to reinstate the workman and to pay him back wages with effect from 19-4-1993. The management is also directed to allow him to appear at the screening test and also to consider him for time scale, the workman also having completed 180 days of working in one calendar year.

In the circumstances of the case, the parties shall bear their own cost.

P. K. SINHA, Presiding Officer

तर्द दिल्ली 4 अक्टूबर, 1995

का. आ. 2832—श्रीधोगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसार में केन्द्रीय सरकार डिस्ट्रिक्ट मैनेजर, टेलीकाम तोरुनैलैवली के प्रबन्धसंकार के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रीधोगिक विवाद में श्रीधोगिक अधिकारण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29 सितम्बर, 1995 को प्राप्त हुआ था।

[संख्या एन- 40012/95/92 आई आर (डी यू.)]
के. बी. बी. उन्नी, ईस्क अधिकारी

New Delhi the 4th October, 1995

S.O. 2832.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Madras as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Telecom District Manager, Tirunelveli and their workmen, which was received by the Central Government on 29-9-95.

[No. L-40012/95/92-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMAL NADU, MADRAS

Monday the 4th day of September, 1995

Present:

THIRU N. SUBRAMANIAN, B.A.B.L.
INDUSTRIAL TRIBUNAL
INDUSTRIAL DISPUTE NO. 93/1993

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 in between the Workman and the Management of Telecom District Manager, Tirunelveli).

BETWEEN

Shri P. Murugaiah,
C/o M. Murugaiah,
Circle Organising Secretary,
NFTE-4, Cross Bar Exchange,
Rajapalayam—626117.

AND

The Telecom District Manager,
Tirunelveli—627011.

Reference:

Order No. L-41012/95-IR(DU), dt.
17-9-93, Ministry of Labour, Govt. of
India, New Delhi.

This dispute coming on for final hearing on Monday, the 22nd day of August, 1995 upon pursuing the reference, Claim and Counter statements and all other material papers on record, and upon hearing the arguments of Tvl. PSV Giridhar, and D. Geetha, Advocates appearing for the workman and of Tmt. C. K. Vishnupriya, Addl. Central Government Standing Counsel appearing for the Management, and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

The Government of India by its order No. L-41012/95/92-IR(DU), dated 17-9-93, has referred for adjudication by this Tribunal the following dispute u/s 10(1)(d) of the Industrial Disputes Act, 1947.

“Whether the action of the Telecom District Manager, Tirunelveli, is justified in terminating the services of Shri P. Murugaiah, If not to what relief he is entitled ?”

2. The case of the petitioner is as follows:

He was originally appointed as a casual labourer in 1983 by the Assistant Engineer, Coaxial Cable Division, Madras. He was selected from the panel

of candidates sponsored by the Employment Exchange. He has rendered service for about 465 days upto 22-11-88. In 1986 and 1987 he suffered from illness and therefore, was unable to attend the work for some days. When he reported for work on 22-11-88, he was refused to give work. His services were orally terminated. When requested by the petitioner as to the reason for his termination, the respondent refused to give any reason. At the time of his termination the petitioner was drawing a daily wage of Rs. 42. The petitioner preferred the petition for conciliation before the Assistant Commissioner of Labour (Central), Madras. As the Conciliation Officer was unable to effect any Settlement, he submitted a failure report on 29-5-92. The petitioner has put in more than 240 days of service as such he is entitled to protection under Chapter 5(a) and 5(b) of the Industrial Disputes Act. No notice was served upon him before termination. No retrenchment compensation was also paid to him. The Tirunelveli District employees more than 100 employees and as such they ought to have obtained the prior permission of Government before retrenching the petitioner. Further, several juniors of the petitioner have been retained in service while petitioner alone has been signed out and terminated. The termination of the petitioner is in gross violation of the principles of natural justice. Several similarly situated persons such as many of petitioner's juniors have been regularised against Group D posts in accordance with the orders of the Supreme Court. The respondent without any legal basis terminated his services. Hence the dispute has been raised.

3. The respondent filed his counter contending that the statement that he was selected from the panel of candidates sponsored by the Employment Exchange, is not correct. The Assistant Engineer, Coaxial division, Madras employed him as a casual labourer subsequently issued 16 Ems certificate. From October 1983 to February 1984 he did not turn up for work continuously for more than 150 days. Again from 1st April 1984 to February 1985 he was absent. From August, 1985 to October 1985 he did not turn out for work. The petitioner is a habitual absentee. The respondent establishment is not an individual establishment. Regularisation of casual labourers are done as per the guidelines issued by the Department of Telecommunications. The claim of the petitioner is not reasonable and illegal. Casual labourers are neither permanent nor temporary employees and therefore, they are not governed by the provisions of the Fundamental Central Civil Services. The casual labourers employed under the Telecom District Manager, Tirunelveli, do not fall within the provisions of the Industrial Disputes Act. The question of intimating the Government did not arise as the petitioner was not regularised. As the petitioner did not

satisfy regularisation requirements, he was not regularised. Casual labourer is only an employee by contract of engagement and not a civil servant holding a temporary post. Hence the dispute raised by the petitioner may be dismissed.

4. By consent Exs. W-1 to W-5 and M-1 to M-4 were marked. The argument of both sides were heard.

5. The point for consideration is: Whether the action of the Telecom District Manager, Tirunelveli, is justified in terminating the services of Shri P. Murugaiah? If not to what relief he is entitled to?"

6. The point: Admittedly the petitioner was appointed as a casual labourer in 1983. He was appointed by the Assistant Engineer, Coaxial, Cable Division, Madras. He was working in the Tirunelveli division at the time of his termination. According to the petitioner, since he was suffering from illness, in 1985 and 1986, he was unable to attend the work for some days. But according to the respondent, he was absent for duty for so many days, even from the year 1983 onwards. So, when the petitioner reported for duty on 22-11-88, he was refused to give work and orally informed, he was terminated from service. Thereafter he filed a petition before Conciliation Officer, Ex. W-2. The Conciliation Officer filed a failure report Ex. W-5 to the Government. Thereafter the matter was referred to before this Tribunal. According to the petitioner's counsel, though the petitioner was appointed as a casual labourer the termination of the petitioner will amount to retrenchment from service as the petitioner has put in more than 240 days in a year prior to the date of termination. As per the decision reported in 1971 ILLNP 241, even a casual worker would come within the definition of the workman. in defining the workman, the legislature had made no distinction and even a casual worker would come within the definition of the workman. Therefore, the petitioner even though appointed as a casual labour is entitled to the protection u/s. 25-F of the I.D. Act. The petitioner relied on Ex. M.3 marked by the respondent to prove that he was worked 248 days upto the date of his termination. Therefore, he has worked for more than the required 240 days in a year to get the benefit of Sec. 25-F. It is fairly conceded by the respondent's counsel that the petitioner was not given one month notice or one month pay in lieu of notice or retrenchment compensation is provided u/s. 25-F. So, when the respondent did not comply with the provisions of Sec. 25-F of the I.D. Act, the order of termination is void. For that the petitioner's counsel relied on a decision reported in AIR 1960 Supreme Court P 610. It has been held at a plain reading of Sec. 25-F(b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of

the workman and non-compliance with that will render the impugned retrenchment invalid and inoperative. Therefore, the termination of the services of the petitioner which amounts to a retrenchment is invalid for the non-compliance of the Sec. 25-F of the Industrial Disputed Act.

In the result, award is passed directing the respondent to reinstate the petitioner in service with continuity of service and without backwages. No costs.

Dated, this the 4th day of September, 1995.

THIRU N. SUBRAMANIAN, Industrial Tribunal

WITNESSES EXAMINED

For Management : None.

For Management: Non

DOCUMENTS MARKED

For Workman:

Ex. W-1|7-11-91 : 2-A petition filed by the workman Thiru P. Murugaiah before the Assistant Labour Commissioner (Central), Madras-6 (Xerox copy).

W-2| : Counter to Ex. W-1 filed by the Management (Xerox copy).

W-3|26-2-92 : Reply to Ex. W-2 filed by the workman before the Assistant Labour Commissioner (Central), Madras-6 (Xerox copy).

W-4| : Reply to Ex. W-3 filed by the Management (Xerox copy).

W-5|29-5-92 : Conciliation Failure Report (Xerox copy).

For Management:

Ex. M-1|12-9-82 : Letter from the Assistant Engineer, Coaxial Cable Projects, Madras-6 to the District Employment Officer, Tirunelveli regarding appointment of casual mazdoor (Xerox copy).

M-2|5-2-91 : Letter from the Management to the workman (Xerox copy).

M-3 : Statement showing total number of days worked by the workman during January 1983 to December, 1988 (Xerox copy).

M-4 : Check list for condonation of break in the work period of the workman (Xerox copy).

नई दिल्ली, 5 अक्टूबर, 1995

का. नं. 2833—जबकि दूर संचार विभाग, करीम नगर के प्रबंधन और उनके कामगार जिनका प्रतिनिधित्व अधिकारी भारतीय दूर संचार कर्मचारी संघ, लाइन स्टाफ एवं यूप “ई” करीम नगर द्वारा दिया जा रहा है, के बीच एक अधिकारीय विवाद विद्यमान है,

और जबकि, उक्त प्रबंधन और उनके कामगार, जिनका प्रतिनिधित्व अधिकारी दूर संचार कर्मचारी संघ, लाइन स्टाफ एवं यूप “ई” द्वारा किया जा रहा है, अधिकारीय विवाद प्रधिनियम, 1947 (1947 का 15) की धारा 10-क की उपधारा (i) के अंतर्गत एक लिखित करार द्वारा उक्त विवाद को विवरण्य हेतु भेजने पर सहमत हो गए हैं तथा उक्त विवाचन करार की एक प्रति केन्द्रीय सरकार को अप्रेलित करार दी गयी है,

अतः अब, उक्त प्रधिनियम की धारा 10-क की उपधारा (3) के प्रनुसरण में केन्द्रीय सरकार उक्त करार को प्रकाशित करती है।

करार

(अधिकारीय विवाद प्रधिनियम, 1947 की धारा 10-क के अंतर्गत)
के बीच
पक्षकारों के नाम

नियोजक के प्रतिनिधि	कामगार के प्रतिनिधि
उप-प्रभागीय अधिकारी, दूर-संचार, जगीतल-505327	श्री ए. सेमुल, पूर्व नैमित्तिक अधिकारी भी ए., ग्रामामीली, क्षेत्रीय सचिव, ए. शाईटी ई यु. म. नं. 6-1-14, अशोक नगर, करीम नगर-505001
(i) विवाद का विशिष्ट मामला	श्री ए. सेमुल, पूर्व नैमित्तिक अधिकारी भी ए., ग्रामामीली, क्षेत्रीय सचिव, ए. शाईटी ई यु. म. नं. 6-1-14, अशोक नगर, करीम नगर-505001
(ii) विवाद में शामिल पक्षकारों के नाम और पते सहित	उप-प्रभागीय अधिकारी, इन- संचार, जगीतल-505327
(iii) कामगार का नाम यदि वह विवाद में स्वयं अतिरेक हो या अधिकारी नाम संघ का नाम, जो कामगारों द्वारा प्रस्तुत कामगार का प्रतिनिधित्व करता हो	श्री ए. सेमुल, पूर्व-नैमित्तिक अधिकारी भी ए., ग्रामामीली, क्षेत्रीय सचिव, ए. शाईटी ई यु. म. नं. 6-1-14, अशोक नगर, करीम नगर
(iv) प्रभावित उपकरण में नियोजित कामगारों की कुल संख्या	50
(v) विवाद से प्रभावित अधिकारी प्रभावित होने वाले कामगारों की अनुमानित संख्या	एक

विवाचक अपना पंचाट तीन माह की अवधि के भीतर अधिकारी द्वारा दिया जाना होता है और अवधि के भीतर देना। अधिकारी द्वारा दिया जाना होने वाले कामगारों की अनुमानित संख्या

लिए संदर्भ स्वतः निरस्त हो जाएगा और हम नए सिरे से विवाचन लेतु बातचीत करने के लिए स्वतंत्र होंगे।

प्रबंधन की ओर से

संघ की ओर से

ह./-
(एन. थैकटराव)
एस डी ओटी/जगीतल

ह./-
(ए. राजामोली) अधिकारीय सचिव,
ए. आर. ई. यु. लाइन स्टाफ
एवं यूप “ई”, वारंगल जिला,
करीम नगर

उपर्युक्त विवाचन ममझीतों पर, उक्त विवाद में स. अमा. (के.) मन्तीरियाल के समध आयोजित संसाधन कार्यालय के दौरान 5-9-1995 को सहायक अमायुक्त (के.), मन्तीरियाल के समध हस्ताक्षर किए गए।

ह./- मेरे समझ

ह./-

(के. के. एवं एम. याम सुन्दर)
महायक अमायुक्त (केन्द्रीय), मन्तीरियाल

विवाचक की सहमति

विषय—उप-प्रभागीय प्रधिकारी, दूर संचार, जगीतल के प्रबंधन और उनके कामगार श्री ए. सेमुल, पूर्व नैमित्तिक अधिकारी के मध्य अधिकारीय ग्रामामीली द्वारा उनकी भेजाई समाप्त कर दिए जाने पर अधिकारीय विवाद के संबंध में।

कृपया उपर्युक्त विषय पर प्राप्तके दिनांक 8 अक्टूबर, 1995 के एवं स. 9/7/95 ए. एल. सी./एम. सी. आई. का मंदर्भ लेने।

ई, उपर्युक्त विवाद में एक विवाचक के स्पष्ट में कार्य करने की सहमति देता हूँ। आपसे, अनुरोध है कि अधिकारीय विवाद प्रधिनियम के अंतर्गत विवाचक की नियमित के लिए श्रम मंदालय, नई दिल्ली को अपनी रिपोर्ट भेज दें और उसकी सूचना इस कार्यालय को भी दें।

ह./-
(ए. प्रभाकर)
क्षेत्रीय अमायुक्त (के.),
हैदराबाद

[सं. एन-~ 40013/7/95-आई यार. (श्री. यू.)]

के. वी. श्री. उन्नी, ईम्फ अधिकारी

New Delhi, the 5th October, 1995

S.O. 2833.—Whereas, an industrial dispute exists between the management of Telecom Department, Karimnagar and their workman represented by the All India Telecom Employees Union, Line Staff & Group D, Karimnagar.

And whereas, the said management and their workman represented by All India Telecom Employees Union, Line Staff and Group 'D' have by written agreement under sub section (i) of Section 10-A of the Industrial Disputes Act, 1947 (15 of 1947), agree to refer the said dispute to arbitration and have forwarded to the Central Government a copy of the arbitration agreement :

Now, therefore, in pursuance of sub-section (3) of Section 10-A of the said Act, the Central Government hereby publishes the said agreement.

AGREEMENT

(Under Section 10-A of the Industrial Disputes Act, 1947).

BETWEEN

NAME OF THE PARTIES

Representing Employer :

The Sub-Divisional Officer,
Telecom, Jagital-505327

Representing Workman :

Shri A. Samuel, ex-casual Mazdoor, C/o
Shri A. Rajamouli, Area Secy., AITEU,
House No. 6-1-14, Ashok Nagar,
Karimnagar-505001.

It is hereby agreed between the parties to refer the following dispute to the arbitration of Shri A. Prabhakar, Regional Labour Commissioner (C) Hyderabad.

(i) Specific matter in dispute	Alleged illegal retrenchment from service of Sri A. Samuel Ex-Casual Labour w.e.f. 10-12-1989
(ii) Details of the parties to the dispute including the name and address of the establishment or undertaking	The Sub-Divisional Officer Telecom, Jagital 505 327
(iii) Name of the workman in case he himself is involved in the dispute of the name of the union, if any, representing the workmen or workman in question.	Sri A. Samuel, ex-casual mazdoor C/o A. Rajamouli, Area Secy. AITEU, H. No. 6-1-14 Ashoknagar, Karimnagar.
(iv) Total number of workmen employed in the undertaking affected.	50
(v) Estimated number of workmen affected or likely to be affected by the dispute.	One

The Arbitrator shall make his award within a period of three months or within such further time as is extended by mutual agreement between us in sitting. In case the award is not made within the period aforementioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration. One behalf of the management :

Sd/- On behalf of the Union :
Sd/-

(N. Venkat Rao),
SDOT|Jagital.

(A. Rajamouli),
Area Secretary
AITEU, Line Staff &
Group 'D', Warangal Area.
Karimnagar.

The above arbitration agreement has been signed before the Assistant Labour Commissioner (Central), Manchiryal on 5-9-1995 during the conciliation proceedings held before ALC(C), Manchiryal in the above dispute.

Sd/- Before me Sd/-

Sd/-

(K. K. H.M. Syam Sundar)
Assistant Labour Commissioner (C)
Manchiryal.

CONSENT OF THE ARBITRATOR

Sub.—I. D. between the management of Sub-Divisional Officer, Telecom, Jagital and their workman Shri A. Samuel, ex-casual mazdoor regarding alleged illegal retrenchment of service—Reg.

Please refer to your letter No. 817/95-ALC|MCI dated the 8th September, 1995 on the above subject.

I hereby give my consent to act as Arbitrator in the instant dispute. You are requested to submit your report to Ministry of Labour, New Delhi for appointment of Arbitrator under I.D. Act, under intimation to this office.

Sd/-

(A. PRABHAKAR),
REGIONAL LABOUR COMMISSIONER(C)
HYDERABAD
[No. L-40013/7/95-IR(DU)]
K. V. B. UNNY, Desk Officer

नई दिल्ली, 5 अक्टूबर, 1995
का. आ. 2834.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उन्नाम सी. एल. के प्रबंधनतंत्र के सबूद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण वस्त्र व. 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/9/95 को प्राप्त हुआ था।

[स. एन.-22012/279/93-आईआर (सी II)]

वी. के. गर्मि, डैस्ट्रिक्ट अधिकारी

S.O. 2834.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2 as shown in the Annexure in

the industrial dispute the employers in relation to the management of W.C. Ltd., and their workmen, which was received by the Central Government on the 29-9-95.

[No. L-22012/279/93-IR C-II]
V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY (Camp : Nagpur)

PRESENT

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/93 of 1993

Employers in relation to the management of Sub Area Manager, W.C.L., Nakoda Incline.

AND

Their Workmen

APPEARANCES :

For the Management.—Shri B. N. Prasad, Advocate.

For the Workmen.—Shri G. V. R. Sharma, Secy. RKKMS (INTUC).

Dated the 13th September, 1995

AWARD

The Government of India, Ministry of Labour by its letter No. L-22012/279/93-IR(C.II), dated 16-12-1993 had referred to the following industrial dispute for adjudication :

“Whether the action of the Sub Area Manager, Nakoda Inclines, Western Coalfields Ltd., Distt. Chandrapur in stopping the workers Shri Arun Ramrao Khanke, Kishore B. Raut and Mohd. Razzak Shahabuddin workers of Nakoda Inclines from work without retrenchment compensation is justified ? If not, what relief the workmen are entitled to ?”

2. The Union Rashtriya Koyla Khadan Mazdoor Sangh filed its Statement of Claim at Ex-2. The management resisted the claim by their Written Statement (Ex-3).

3. The Union did not file the documents. Today the case was for filing of documents and leading evidence. Instead of doing so the parties filed Memorandum of Settlement dated 19-8-1995 in form 'H'. In view of it, there is no need to dialect upon the Statement of Claim and the Written Statement.

4. The Memorandum of Settlement was signed by the Secretary and the Personnel Manager and

produced before me by Shri B. N. Prasad, the Learned Advocate for the management. Under such circumstances I pass the following order.

ORDER

The reference is disposed of in terms of settlement (Ex. 4). The terms are as follows :

- (1) That S|Shri Arun Ramrao Khanke, Kishore B. Raut and Mohd. Razzak Shahabuddin shall be re-employed as Badli workers in Cat. I on initial basic pay within one month of signing this settlement.
- (2) They shall be posted at Makardhokra of Umrer Area.
- (3) They shall report for duty to the General Manager, Umrer Area.
- (4) That, this settlement shall resolve the issue fully and finally and neither the union nor any of these three workmen will raise any dispute in this regard before the Management, conciliation machinery or any Court of Law including Tribunal or at any forum at any time in future.
- (5) Before joining duties at Umrer Area, S|Shri Arun Ramrao Khanke, Kishore B. Raut and Mohd. Razzak Shahabuddin will submit a written undertaking duly countersigned by the Secretary of RKKMS (INTUC) (Shri G. V. R. Sharma) that they will abide fully by the terms & conditions of this settlement.
- (6) That, the period of idleness, that is from the date of their stoppage from duty due to nonavailability of work at Nakoda till the date of their joining after signing this settlement shall be treated as dies non, on the principle of 'no-work no-pay' and the workmen are not entitled to any monetary benefit, claims etc., whatsoever.
- (7) That, it is agreed that in case of any dispute in the matter of interpretation of this settlement, the matter shall be referred to GM(IR) whose decision/interpretation shall be final and binding on the parties in all respect.
- (8) That, this settlement shall not be cited as a precedent for any matter, whatsoever, by the union.
- (9) That, the parties shall file a copy of this settlement before CGIT No. 2 Bombay where the case is pending for adjudication and shall jointly verify the settlement before the Hon'ble Presiding Officer, CGIT No. 2, Bombay on its next date praying for giving a Consent Award.

S. B. PANSE, Presiding Officer

नई दिल्ली, 5 अक्टूबर, 1995

का. आ. 2835.—आंशोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्डिया, सी. पल., के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनवंध में निर्दिष्ट आंशोगिक विवाद में केन्द्रीय सरकार आंशोगिक अधिकरण, बम्बई नं. 2 के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/9/95 को प्राप्त हुआ था।

[स. प्र.-22012/332/93-आईआर (सी I)]
श्री. के. शर्मा, इंस्प्र क्र अधिकारी

New Delhi, the 5th October, 1995

S.O. 2835.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2 as shown in the Annexure in the industrial dispute between the employers in relation to the management of W. C. Ltd., and their workmen, which was received by the Central Government on the 29-9-95.

[No. L-22012/332/93-IR (C.II)]
V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2.
BOMBAY

(Camp : Nagpur)

PRESENT

SHRI S. B. PANSE, Presiding Officer

REFERENCE NO. CGIT-2/13 OF 1994

Employment in Relation to the Management of
Ballarpur Colliery of WCL

AND

Thir Workmen :

APPEARANCES :

For the Management : Shri G. S. Kapur,
Advocate

For the Workmen : No. appearance.

New Delhi, the 14th September, 1995

AWARD

The Government of India, Ministry of Labour
by its letter No. L-22012/332/93-IR(C.II), dated

4-2-1994 had referred to the following industrial dispute for adjudication.

“Whether the action of the management of Sub Area Manager, Ballarpur Colliery 3 & 4 pits, PO : Ballarpur, Distt. Chandrapur, in treating the date of birth in respect of Shri Shamrao Raghunath, Jr. Cap Lamp Incharge as 1-7-1934 is justified or not ? If not, to what relief the workman is entitled to ?

2. The Desk Officer while sending the reference to this Tribunal had also sent the copies of that letter to the concerned parties. The Secretary of the Tribunal had also sent notices to the concerned parties asking them to comply. The worker nor the Union filed the Statement of Claim. Several opportunities were given to the Union for filing the Statement of Claim. To facilitate them the matter is also posted at Nagpur from which area the Union belongs. But it was of no use. Mr. G. S. Kapur, the Learned Advocate for the management submitted that sufficient opportunity is given to the union to represent their case.. It appears that they are not interested. I find substance in his submissions. The conduct of the Union speaks for itself. In the result, I dispose of the matter ex parte and pass the following order.

ORDER

1. The action of the management of Sub Area Manager, Ballarpur Colliery 3 & 4 pits, PO : Ballarpur, Distt. Chandrapur, in treating the date of birth in respect of Shri Shamrao Raghunath, Jr. Cap Lamp Incharge as 1-7-1934 is justified.

2. No order as to costs.

S. B. PANSE, Presiding Officer

नई दिल्ली, 5 अक्टूबर, 1995

का. आ. 2836—आंशोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्डिया, सी. पल., के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनवंध में निर्दिष्ट आंशोगिक विवाद में केन्द्रीय सरकार आंशोगिक अधिकरण, बम्बई नं. 2 के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/9/95 को प्राप्त हुआ था।

[स. प्र.-22012/317/93-आई. आर. (सी II)]

श्री. के. शर्मा, इंस्प्र क्र अधिकारी

New Delhi, the 5th October, 1995

S.O. 2836.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award

of the Central Government Industrial Tribunal Bombay No. 2 as shown in the Annexure in the industrial dispute between the employers in relation to the management of W.C. Ltd., and their workmen, which was received by the Central Government on the 29-9-95.

[No. L-22012|317|93-IR (CII)]

V. K. SHARMA. Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, BOMBAY
(Camp : Nagpur)

PRESENT :

Shri S. B. Pansc, Presiding Officer.

Reference No. CGIT-2|4 of 1994

Employers in relation to the management of
Neeljay sub area of WCL.

AND

THEIR WORKMEN

Their Workmen

For the Management : G. S. Kapur, Advocate

For the Workmen : G.V.R. Sharma, Secretary
RKKMS (INTUC)

AWARD

Dt. 14th September, 1995

The Government of India, Ministry of Labour by its letter No. L-22012|317|93-IR(C.II), dt. Jan. 21st, 1994 had referred to the following industrial dispute for adjudication. It is in the following words.

"Whether the action of Sub Area Manager, Neeljay II, W.C. Ltd., Dist. Yeotmal, vide letter No. WCL|WA|SAM|NLSA|PER|2763 dt. 16-12-1992 in dismissing the services of Shri B. R. Khandukure, E.P.G. Helper is justified ? If not to what relief the workman is entitled for ?"

2. The Union through its Secretary filed the Statement of Claim and the matter was adjourned for filing written statement. The management did not file the written statement.

3. Today, when the matter called out, the Secretary of the Union and the Personnel Manager (Legal) for the management through their representative filed a memorandum of settlement dt. 28.6.95 in Form 'H' of the Industrial Dispute Act 1947 and informed the Tribunal that the reference may be disposed of in terms of settlement. I accept and pass the following order.

ORDER

The reference is disposed of in terms of the Settlement filed at Exhibit 4.

The terms of settlement are as follows :—

- That Shri Bhushan Khankure will be re-employed as General Mazdoor in Cat. I on a basic pay of Rs. 41.97 in the scale of Rs. 38.47-0.70-48.27 and posted at Godegaon Project of Nagpur Area within one month of signing this settlement.
- That Shri Bhushan Khankure shall report for duty to the General Manager, Nagpur Area.
- He shall submit an undertaking that he will discharge his duties sincerely and maintain good performance, conduct & discipline and regular in his duties duly countersigned by the Secy. to the Union (Shri G. V. R. Sharma).
- That, in case of any adverse report about his conduct, discipline or performance during the period of one year of his joining after re-employment, his services will be liable for termination without assigning any reasons therefor, notwithstanding the provisions of Standing Orders.
- That, the period of idleness, that is from the date of his dismissal from services till the date of his joining on being re-employed, shall be treated as dies-non, on the principle of 'no work no pay' and the workman is not entitled to any monetary benefit, claims, etc., whatsoever. However, his past period of employment shall be considered, for the limited purpose of gratuity only in future.
- That, this settlement shall resolve the issue fully and finally and neither the union nor the workman will raise any dispute in this regard before the management, conciliation machinery or any Court of Law including Tribunal or at any forum at any time in future.
- That, it is agreed that in case of any dispute in the matter of interpretation of the settlement, the matter shall be referred to GM(IR) whose decision/interpretation shall be final and binding on the parties in all respects.
- That, this settlement shall not be cited as a Precedent for any matter, whatsoever, by the Union.
- That, the parties shall file a copy of this settlement before the CGIT, No. 2 Bombay where the case is pending for adjudication, and shall jointly verify the

settlement before the Hon'ble Presiding Officer, CGIT, Bombay on its next date praying for giving a consent award.

S. B. PANSE, Presiding Officer

नई दिल्ली, 5 अक्टूबर, 1995

का. आ. 2837.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधताल के गंवङ्ग नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अम्बई नं. 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/9/95 को प्राप्त हुआ था।

[स. ए. 22012/255/93-प्राई. आर. (सी-II)]

वी. के. शर्मा, डैस्ट्रिक्ट अधिकारी

New Delhi, the 5th October, 1995

S.O. 2837.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay No. 2 as shown in the Annexure in the industrial dispute between the employers in relation to the management of W.C. Ltd., and their workmen, which was received by the Central Government on the 29-9-95.

[No. L-22012/255/93-IR(C-II)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

(Camp : Nagpur)

PRESENT :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/1 of 1994

Employers in relation to the management of
New Majri Mine of W.C.Ltd.

AND

THEIR WORKMEN

APPEARANCE:

For the Management : Shri B. N. Prasad,
Advocate.

For the workmen : No appearance.

Dt. 14th September, 1995

AWARD

The Government of India, Ministry of Labour
by its letter No. L-22012/255/93-IR(C-II), dated

19-1-1994 had referred to the following industrial dispute for adjudication.

"Whether the action of the management of Supdt. Manager of New Majri Mine, W.C. Ltd., Distt. Chandrapur in stopping the workers Shri Ramesh Govind Pachare, Eknath Maroti Gaurkar, Bandu Bhuduji and Shri Subhash Sambhu Shambharkar from work vide letter No. WCL/NMSA/PER/4059 dated 10-11-1991 is justified or not? If not, to what relief the workmen are entitled for?"

2. The Desk Officer had sent the copies of the terms of reference to the concerned parties. After the receipt of the same, the Secretary of the Tribunal had also sent the notices to the concerned parties, but, no Statement of Claim was filed by the party who raised the industrial dispute. The matter was adjourned for filing the Statement of Claim from time to time. It is kept at Nagpur to facilitate Union who hail from this area but, it was of no use, no Statement of Claim was filed by the Union. Mr. Prasad who represent the management insisted that as the concerned party is not interested in prosecuting the matter it may be dismissed and the reference may be answered in favour of the management. I find justification for the same.

ORDER

1. The action of the management of Supdt. Manager of New Majri Mine, W.C.L. Distt. Chandrapur, in stopping the workers Shri Ramesh Govind Pachare, Eknath Maroti Gaurkar, Bandu Bhuduji and Shri Subhash Sambhu Shambharkar from work vide letter No. WCL/NMSA/PER/4059 dated 10-11-1991 is justified.

2. No order as to cost.

S. B. PANSE, Presiding Officer

नई दिल्ली, 5 अक्टूबर, 1995

का. आ. 2838.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम. ई. सी. एल. के प्रबंधताल के गंवङ्ग नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अम्बई नं. 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-95 को प्राप्त हुआ था।

[स. ए. 22012/329/93-प्राई. आर. (सी-II)]

राजा लाल, डैस्ट्रिक्ट अधिकारी

New Delhi, the 5th October, 1995

S.O. 2838.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2 as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.E.C. Ltd. and their workmen, which was received by the Central Government on the 29-9-1995.

[No. L-22012/329/93-IR(C-II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

(Camp : Nagpur)

PRESENT

SHRI S. B. PANSE
PRESIDING OFFICER

REFERENCE NO. CGIT-2/11 of 1994
Employers in relation to the management of
Duman Hill Colliery of Chirimiri Area
of SECL.

AND

Their Workmen

APPEARANCES :

For the Management : A. K. Sasidharan Advocate.

For the Workmen : No appearance.

Dated 14th September, 1995

AWARD

The Government of India, Ministry of Labour vide its letter No. L-22012/329/93-IR (C-II), dated 9-2-94 had referred to the following industrial dispute for adjudication.

“Whether the action of the Supdt. of Mines, Duman Hill Colliery Chirimiri Area of SECL in dismissing Shri Ramkrishan S/o Daduram, Conveyor Khalasi from company services w.e.f. 12-9-1990 is legal and justified? If not, to what relief the workman is entitled to?”.

2. Notice of this reference were issued to the concerned parties by the Desk Officer and also by the Secy. of this Tribunal. Some team of advocates appeared for the management, but nobody appeared for the Union. The matter was adjourned from time to time for filing Statement of Claim by the Union, but no claim was filed nor any adjourn-

ment was sought for filing the Statement of Claim. The conduct speak that the worker nor his union are interested in prosecuting the matter. In the result I do not find any justification in keeping the matter on file when the representative of the management is insisting for its dismissal. The matter has to be disposed of ex parte.

ORDER

1. The action of the Supdt. of Mines, Duman Hills Colliery of Chirimiri Area of SECL in dismissing Shri Ramkrishan S/o Daduram, Conveyor Khalasi from company service w.e.f. 12-9-1990 is legal and justified.
2. No order as to costs.

S. B. PANSE, Presiding Officer

नई दिल्ली, 5 अक्टूबर, 1995

का. आ. 2839.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की वर्ता 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनवंच में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अम्बई नं. 2 के वंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-9-95 को प्राप्त हुआ था।

[स. एल.-22012/198/92-आई. आर. (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 5th October, 1995

S.O. 2839.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2 as shown in the Annexure in the industrial dispute between the employers in relation to the management of W.C. Ltd., and their workmen, which was received by the Central Government on the 29-9-95.

[No. L-22012/198/92-IR (C-II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

(Camp : Nagpur)

PRESENT :

Shri S. B. Panse, Presiding Officer
Reference No. CGIT-2/57 of 1992

Employers in relation to the Management of
Rajur Colliery, W.C. Ltd.,

AND
Their workmen

APPEARANCES :

For the Management.—G. S. Kapur,
Advocate.

For the Workmen.—D. N. Choube General
Secretary SKKMS (AITUC) Majri Area.

Dated, 13th September, 1995

AWARD

The Government of India, Ministry of Labour by its letter No. L-22012/198/92-IR(C.II), dt. 12-10-92 had referred to the following industrial dispute for adjudication :

“Whether Shri Sagar Haridas, Casual Loader, is entitled to get the job after completing 190 days of service as under-ground Loader and as per letter of Dy. Chief Personnel Manager, W.C. Ltd., Wani Area dt. 5-3-1991 by the Sub Area Manager, W.C. Ltd., Rajur Colliery, Wani Area, Dist. Yeotmal ? If not, to what relief the workman is entitled to ?”

2. The Union filed its Statement of Claim at Ex. 3 and the management filed its written Statement at Ex. 4.

3. My Learned predecessor framed issues at Ex. 5.

4. It can be seen that today Mr. G. S. Kapur, the Advocate for the management filed terms and conditions of settlement between the parties. He had also informed that the Union is remaining absent in view of the said settlement and which is already acted upon. The photostat copy is signed by the parties. I do not find any reason for not accepting the submissions made by the Advocate at Bar. It is, therefore, not at all necessary to refer to in detail the statement of claim and the written statement. In the result I pass the following order.

ORDER

The reference is disposed of in terms of the terms and conditions of settlement Ex. 12 which is mentioned in para 1 to 8 which I reproduce here :

1. It is agreed that Shri Sagar s/o Haridas shall be re-employed as Badli Tub Loader (UG) & shall be posted at Majri-Area.

2. It is agreed that period of idleness from the date of termination to the date of joining duty on re-employment as Badli Tub Loader (UG) shall be treated as “Dies-non” on the principle of “No work no pay”.

3. It is agreed that Shri Sagar s/o Haridas shall not be entitled for any other benefits whatsoever for the above mentioned idle period, except the benefit of continuity of his past period of service,

for the limited purpose of gratuity repeat for the limited purpose of gratuity only.

4. It is agreed that his seniority for the other purposes on the job of Badli Tub Loader (UG) on re-employment shall be reckoned from the date of his joining duties in terms of this settlement.

5. It is agreed that this is full and final settlement & neither the Union nor the workman concerned shall raise any claim/dispute whatsoever in future in any forum or through any other union, about this settlement.

6. It is agreed that in case of any dispute in the matter of interpretation of this settlement, the matter shall be referred to GM (IR)WCL, Nagpur, whose decision/ interpretation shall be final and binding on the parties in all respects.

7. That this settlement shall not be cited precedent/example for any matter, whatsoever by any one at any time.

8. That this settlement shall be filed before CGIT consent award in case No. 2/57/92 of CGIT-II, Bombay.

S. B. PANSE, Presiding Officer
आदेश

नई दिल्ली, 6 अक्टूबर, 1995

का. आ. 2840.—भारत सरकार में तत्कालीन श्रम तथा पुनर्वासि भवालय (श्रम विभाग) की अधिभूतना संस्था का. आ. 2252 दिनांक 21 मई, 1983 द्वारा गठित औद्योगिक अधिकरण, चंडीगढ़ के पीठामीन अधिकारी के कार्यालय में एक स्मान रिक्त हो गया है।

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 8 के उपवर्धों के अनुसरण में केन्द्रीय सरकार श्री एम. आर. बंसल को 15 सितम्बर, 95, के अपराह्न से उक्त औद्योगिक अधिकरण के पीठामीन अधिकारी के स्थान में नियुक्त करती है।

[संख्या ए-11046/1/95-सी. एन. एस.-II]

इन्द्र मिह अवर सचिव

ORDER

New Delhi, the 6th October, 1995

S.O. 2840.—Whereas a vacancy has occurred in the office of the Presiding Officer of the Industrial Tribunal, Chandigarh, constituted by the notification of the Government of India in the then Ministry of Labour & Rehabilitation (Department of Labour) No. S.O. 2252 dated 21st May, 1983.

Now, therefore, in pursuance of the provisions of Section 8 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby appoints Shri S. R. Bansal, as the Presiding Officer of the said Industrial Tribunal with effect from 15th September, 1995.

[F. No. A-11016/1/95-CLS-II]
INDER SINGH, Under Secy.

आदेश

भारत दिल्ली, 6 अक्टूबर, 1995

मा. आ. 2841.—भारत सरकार में लक्ष्मीनाथ श्रम तथा पृनवसि मंत्रालय (श्रम विभाग) को अधिसूचना मंज्या वा. आ. 2251 दिनांक 21 मई, 1983 द्वारा गठित श्रम न्यायालय चौधोगढ़ के पीटासीन अधिकारी के कागदिय में प्रभाव रिस्क हो गया है।

अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की व्याया 8 के उपबंधों के अनुसरण में केन्द्रीय सरकार श्री एस. आर. बंसल को 15 मित्तमवर, 1995 के अनावृत्ति से उक्त श्रम न्यायालय के पीटासीन अधिकारी के रूप में नियुक्त करती है।

[संख्या ए—11016/1/95-सी. पा. एस.-II]
इन्द्र सिंह, अवर सचिव

ORDER

New Delhi, the 6th October, 1995

S.O. 2841.—Whereas a vacancy has occurred in the office of the Presiding Officer of the Labour Court, Chandigarh, constituted by the notification of the Government of India in the then Ministry of Labour & Rehabilitation (Department of Labour No. S.O. 2251 dated the 21st May, 1983.

Now, therefore, in pursuance of the provisions of Section 8 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby appoints Shri S. R. Bansal as the Presiding Officer of the said Labour Court with effect from 15th September, 1995.

[F. No. A-11016/1/95-CLS-II]
INDER SINGH, Under Secy.